their testimony. However, following their testimony and before the close of the hearing, Chairman Kerry swore in the witnesses in a retroactive swearing or affirmation.]

TESTIMONY OF RICHARD KERR, ACTING DIRECTOR OF CENTRAL INTELLIGENCE

Mr. KERR. Mr. Chairman, thank you.

First of all, I might say just in a general comment that, as an intelligence officer for 30 years, I find myself a little reluctant in an open hearing to talk about intelligence, intelligence sources, and intelligence methods, and the information that we acquire through that process.

You pointed out, for instance, that you saw a report, or at least heard about a report, that you didn't find particularly——

Senator KERRY. Would you pull the mike a little bit closer, if you would. That would be helpful. Thank you.

Mr. KERR [continuing]. That you saw a report that you didn't find the information in particularly sensitive. I think often that is true.

But our concern is not only the information that we get, but also the way we get it. Sometimes you can get information overtly, out of a newspaper; and sometimes you can get it clandestinely. It is the sources and the sensitivity of those sources sometimes that makes the difference between how we classify and not the information that is contained in the report.

We are, and I am, responsible, and you have indicated you are clearly not trying to go beyond this process into the details of the intelligence operations. I appreciate that.

Senator KERRY. Let me just say that I totally agree. We're running into a lot of that in the MIA/POW issue. Clearly, sources indicate an enormous amount, and there is obviously a reason to keep sources quiet, to protect them, sometimes their lives, let alone the network. I understand that.

In this particular memo, it was just a summary written by somebody in the Agency, with no sources mentioned. I tried to separate that.

Mr. KERR. I understand. But sometimes it's rather difficult, and maybe it's difficult for us at times to separate the information we get from the way we get it. So we are often looking at how we get it as the sensitivity, rather than just the information.

I might also say that, in this case, it is extremely important, from my perspective, to protect sources and methods because, if I'm going, as an intelligence organization, if we are going to continue to collect against areas of importance to national security, I need to protect those sources. I mean, the very areas I'm going to talk about today are not areas that are history. They involve activities and things that are ongoing and that are very important to the future.

At the same time, one of the reasons I'm here is because I think it's important to clear the air, and I think it's important to state what CIA's and the intelligence community's involvement with BCCI was. I intend to do that as directly and as forthrightly as I can, while also trying to protect the information as best I can.

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I have a statement that's going to set it out in an unclassified form. As an introduction, let me state that CIA conducted a thorough review of its activities over the past several years with regard to BCCI. We've done that from the management point of view, from our own intelligence point of view, and an independent investigation has been conducted by our statutory Inspector General.

The results of our look at this, including the report by our statutory Inspector General, were made available to the Senate and House Intelligence Oversight Committees, which are our principal funnels into the Congress. The Senate Intelligence Committee has conducted its own independent investigation of CIA's involvement with BCCI with the full cooperation of the Agency and of the intelligence community. We expect their report will support our findings on this issue and the points that I'll make subsequently.

There have been, from my perspective, a number of outrageous and unfounded allegations of illegal or improper relationships between CIA and BCCI that have been made in the press and elsewhere. I want to respond to several of those allegations directly.

But first, I'd like to provide the committee with a perspective of the Agency's foreign intelligence collection program against BCCI.

CIA's foreign intelligence collection focus on BCCI began in the mid-1980's, due to their suspected involvement in narcomoney laundering. As a result of an initial, successful, intelligence collection operation, a larger operational program was developed in the timeframe from 1986 to 1990.

This operation focused on the people, the mechanisms, and the way that BCCI laundered narcotics money.

As a byproduct of our effort against BCCI money laundering, the CIA collected limited intelligence on such things as the manipulation of financial markets, weapons proliferation, and terrorism. CIA reported in early 1985 that BCCI had succeeded in gaining control of Financial General Bankshares in late 1981. As you know, Financial General Bankshares later became First American Bankshares.

During the period from 1979 to 1991, several hundred reports were produced by the Agency's Directorate of Operations discussing BCCI's activities. BCCI was also discussed in a number of finished Directorate of Intelligence studies, analytic studies, where information about the organization was tied into larger discussions of terrorism and counter narcotics.

The CIA's intelligence on BCCI was disseminated to a number of U.S. Government intelligence consumers, including Treasury, Customs, Commerce, DEA, NSA, DIA, Federal Reserve Board, the Department of Energy, U.S. Trade Representative, the Department of State and the FBI.

They were distributed during this entire period, as information was received, as individual reports.

Now, I might add that not all of the reports went to all of the consumers. Some reports were earmarked for particular people, and some were sent to a larger number of customers. The distribution of some was rather limited.

I might also add that's one issue where we have looked back at our own dissemination and are going to try to tighten it up a bit to be a little more consistent than we have been in the past, and try

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to make sure that we have a little better focus on our dissemination of reporting on issues like this in particular.

As for allegations in the media of CIA illegal or improper relationships with BCCI, let me go down those directly.

CIA did not assist or encourage, either by action or implication, any wrong-doing on the part of BCCI or its employees. CIA took no action, including withholding information, to influence or impede any existing or potential civil or criminal investigation or prosecution of BCCI. In addition to providing information concerning BCCI activities to law enforcement agencies, CIA registered no objection when it was consulted by law enforcement agencies regarding whether any CIA equities might be imperiled by an investigation or a prosecution.

To the contrary, in all the instances where the Agency was consulted, CIA responded that law enforcement action would not impact on Agency interests.

The Agency did not acquire intelligence on the decisions made by or the role played by major foreign shareholders in the operation of BCCI, including Kamal Adham and Adnan Khashoggi. I'll go back to this point in a moment.

With regard to BCCI in Panama, the Agency collected intelligence on the use of BCCI Panama by major narcotics traffickers. With regard to the plans and intention of the Chairman, Abedi, and senior BCCI management, the Agency collected and disseminated intelligence on the overall corporate strategy of illicit activity in international financial markets. The allegations that the Agency placed Abedi on a watch list or had a direct or indirect relationship with him, or recruited him for CIA activities, are baseless.

CIA was not involved with any alleged BCCI black network of thugs and assassins, as described in the press.

CIA was not involved with, nor did it have knowledge of, any use of BCCI for the sale of arms to Iran or the diversion of funds for the Nicaraguan Contras in connection with the Iran-Contra Affair.

BCCI was not a major banking mechanism used by the Agency for the support of covert foreign intelligence operations. It was used on an extremely limited basis for legal banking transactions. Accounts were also opened with the bank to facilitate acquisition of information concerning the bank's illegal activities.

BCCI management was not witting of Agency involvement in these activities. Let me say that again, because I think that's an important issue and one that we've heard some news about. That is that BCCI management was not witting of Agency involvement in these activities.

In summary, from my perspective and in our review of it, I think CIA did its job and did it well. The Agency collected and disseminated strategic foreign intelligence on BCCI's illicit foreign financial activities to policy makers beginning several years ago. CIA also disseminated that foreign intelligence through appropriate channels to the intelligence and law enforcement communities.

CIA conducted a detailed and thorough investigation of CIA's activities regarding BCCI. No evidence was found indicating any improper or illegal activity by CIA, and we feel confident that the

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Senate Intelligence Committee's investigation, as I said earlier, will reach that same conclusion.

We have asked the SSCI to brief the chairman and other members of this subcommittee on its findings.

I would like to make one point that I think is important to put CIA's activities with regard to BCCI in some appropriate context.

First of all, BCCI was a target. But it's important, I think, to understand that we are not an investigative agency or a law enforcement agency. What we were interested in doing was not trying to find wrong-doing per se and trying to follow the individuals or detail their involvement. Our focus was on the activities that BCCI was involved in with regard to drug traffickers or trafficking, money laundering, terrorism, or arms deals. We were focused on larger strategic problems and issues, not on the bank itself or the individuals involved.

That's one of the reasons why, when you ask us in some of the interrogatories that you've given us for detailed information about individuals or about specific actions, we replied that in effect they were not targets of our particular collection. We were focused on a set of activities that really went beyond BCCI, but that were using BCCI as a mechanism. I think that's an important consideration.

As you've indicated, I would be glad to expand on my unclassified comments in a closed hearing in additional detail.

Senator KERRY. Well, what I'd like to do, Mr. Kerr, is get you to expand in open session a little bit on certain areas here that I think ought to be a permissible area of inquiry. As we discussed previously on the telephone, where we clearly understand that we're moving into an area that might compromise something, then we'll do that privately. But there are some things that I think we could articulate a little bit further that are raised just by your opening testimony here. I'd like to come back to it, if I can.

Who's going to lead off?

Mr. Kreczko. Am I pronouncing that correctly?

Mr. KRECZKO. Yes.

Senator KERRY. Would you just state your name and who you are for the record and go right ahead.

TESTIMONY OF ALAN KRECZKO, DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE

Mr. KRECZKO. Thank you, Mr. Chairman.

I'm Alan Kreczko, Deputy Legal Adviser at the State Department, and I'm pleased to introduce the Department's testimony concerning the foreign policy implications of the Bank of Commerce and Credit International scandal.

As we emphasized in prepared statements submitted to this committee in August, the State Department has viewed this matter from the outset of the revelations of BCCI's control of First American as one properly conducted and controlled by law enforcement and bank regulatory officials.

The Department has undertaken to cooperate to the fullest extent in assisting the various investigative efforts of the Federal Reserve and the Department of Justice. With the continuing support of our embassies and consulates abroad, the Department regu-

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larly provides direct assistance to the Federal Reserve and to the Justice Department in connection with their respective investigative efforts. Questions concerning the conduct of those investigations would need to be put to the law enforcement agencies involved.

The committee has sought the Department's views on the foreign policy implications of the BCCI scandal. We will try to be fully responsive to the committee's questions.

Of course, our assessments are preliminary, since various domestic and foreign investigations are still underway, and the full extent of the implications of this case may not have been disclosed. Moreover, an extraordinarily wide range of allegations has been made concerning BCCI. While the Department has conducted a review of its own files, we are not an investigative agency and have never been involved in foreign investigations of the various accusations that have been leveled against BCCI and its officers.

I am accompanied today by several Department representatives, who will address areas that the committee has indicated to be of specific concern. Sitting at the witness table with me are: Grant Smith, Deputy Assistant Secretary for International Narcotics Matters, who will testify as to what the Department knows about BCCI's role in narcotics operations and money laundering; and Laurence Pope, Associate Coordinator for Counter-Terrorism, who will testify as to what the Department knows about BCCI's role in terrorism.

Sitting behind me and available to answer questions as to what the Department knows about the foreign policy implications of the BCCI scandal in particular regions of the world are: Richard McKee, Director of the Office of Arabian Peninsula Affairs, and Roberta Jacobson, Deputy Director of the Office of Policy Planning and Coordination in the Inter-American Bureau.

Mr. Chairman, before turning to these individuals to address specific areas in detail, I would like to provide a general overview.

First, as I've indicated, the Department has reviewed its records for material related to BCCI. The Department has relatively few records which pertain to BCCI from the 1970's or early 1980's. We have some reporting from the late 1970's on the establishment of BCCI branches in various countries. We have also located a 1978 biographical sketch of Abedi, which noted that BCCI engaged in "questionable, if not illegal" activities, referring to BCCI's effort to acquire Financial General Bankshares.

In 1983, we received a request from New York State authorities for information about BCCI when BCCI sought to establish an agency office there. We solicited the view of our Embassy in Luxembourg and specifically asked for any comment on trafficking in arms or controlled substances.

Our embassy in Luxembourg responded at the time that BCCI was a prominent and reputable financial institution. Thus, our records from this period contain very little suspicious material about BCCI.

This situation changed markedly in the mid-1980's, when the Department became aware of BCCI's involvement in money laundering and terrorism. Mr. Smith and Mr. Pope will explain, subject to

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classification considerations, what the Department knew and how it responded.

With respect to the foreign policy implications of the BCCI scandal, I would distinguish between the implications of our law enforcement actions on U.S. bilateral relations with the key countries concerned, and the effects of the BCCI scandal itself in various countries and regions.

As to the former, U.S. law enforcement actions have not, to date, had a negative impact on bilateral relations with the key countries affected.

Our relations with the United Arab Emirates remain very good. We have explained to the government that our actions are motivated solely by our efforts to enforce the law, and the United Arab Emirates has indicated from the outset its desire to cooperate with U.S. investigators. An investigative team from the Federal Reserve was received in Abu Dhabi last spring, and the UAE Government subsequently made available a large number of BCCI documents to the Federal Reserve.

More recently, the UAE Government has received a team from the Department of Justice.

In Pakistan, the initial public response was that the actions taken by the U.S. and the U.K. were politically motivated and reflected anti-Muslim sentiment. However, as the breadth of the scandal has been revealed, Pakistani depositors have shifted blame to BCCI itself.

There has been extremely close collaboration with the United Kingdom, particularly between the Federal Reserve and the Bank of England. There was the potential for a serious foreign policy dispute with the United Kingdom when the House Banking Committee subpoenaed the Federal Reserve for documents provided them in confidence by the Bank of England. Fortunately, an accommodation was reached with the Bank of England concerning congressional access to certain of those documents.

However, we remain concerned that the issuance of the subpoena could have an adverse impact on the willingness of countries to cooperate in connection with subsequent U.S. investigations.

The Department has also monitored more generally the impact of the BCCI scandal in countries across the globe. While the precise dimensions of the impact cannot be assessed until the various domestic and foreign investigations of BCCI are completed, we foresee the following: damage to the economies of certain countries; international legal tangles over regulatory jurisdiction, bank confidentiality, and the disposition of the BCCI group's remaining assets, perhaps prompting reassessment of laws and regulations governing international banking; and, in certain countries, adverse political fallout.

While our analysis is necessarily preliminary at this stage, we can make a few observations on the current situation.

The political fallout within Europe from the BCCI scandal has been primarily limited to the United Kingdom, where the government's oversight of BCCI has become a domestic political issue. The political impact in other European countries appears marginal.

The scandal appears to have had limited political or diplomatic impact in Africa. However, the economic consequences in Africa

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could be considerable. According to press reports, Cameroon, Zimbabwe, and Zambia together could lose up to $200 million in assets. The BCCI shutdown could also adversely affect business activity in the Sudan, Botswana, Sierra Leone, and the Ivory Coast.

In Latin America, the impact appears to be primarily political, rather than economic, with governments opening investigations on BCCI activities and possible political corruption in Argentina, Peru, and Jamaica.

In East Asia, local depositors have been hurt by the closing of numerous BCCI branches. The decision of the Government of Hong Kong to liquidate the Hong Kong branch of BCCI led to angry protests, but it does not represent a major blow to the Hong Kong financial system.

In the Arabian Peninsula and South Asia, some have chosen to see imperialist and Zionist motivations behind the West's attack on what is popularly viewed as a successful Muslim and Third World bank. In the United Arab Emirates, there is no evidence the scandal has eroded the hold on power of the rules of Abu Dhabi or their popular base of support. The bank's failure may, however, create certain cash flow problems for the UAE.

The ramifications in Pakistan will depend, in part, upon what is confirmed of the press allegations that BCCI operated an arms and drug smuggling operation from Pakistan.

Closure of BCCI's four branches in Bangladesh will adversely affect its 70,000 individual depositors.

The impact of the BCCI scandal on terrorism and narcotics trafficking will be limited. Although there may be temporary disruptions of some financial flows, most terrorist groups and drug traffickers will probably be able to redirect funding transfers through other institutions. Over the longer term, however, the scandal may lead international banks to be more scrupulous about their banking practices.

With these introductory comments, Mr. Chairman, I would ask Mr. Smith and then Mr. Pope to comment in more detail on BCCI's role in money laundering and terrorism respectively.

Thank you.

Senator KERRY. Thank you very much. Mr. Smith.

TESTIMONY OF GRANT SMITH, DEPUTY ASSISTANT SECRETARY, INTERNATIONAL NARCOTICS MATTERS, DEPARTMENT OF STATE

Mr. SMITH. Good morning, Mr. Chairman.

I am Grant Smith. I have been Deputy Assistant Secretary in the Bureau of International Narcotics Matters in the Department of State since October 11.

My predecessor, Parker Borg, outlined in his statement in August what we know about BCCI and actions we have taken to deal with narcotics money laundering.

I'd just like to draw a few comments from that statement.

First, it is important to note that, while the State Department plays an important role in money laundering policy formulation, it is not the lead agency in implementation. We cooperate, however, on a day-to-day basis with those which have the lead on implemen-

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tation: Justice, Treasury, the Drug Enforcement Administration, Customs, and other agencies.

The information we have received is often based on the outcome of successful cases by those law enforcement agencies.

As a result of growing administration concern and congressional concern about narcotics money laundering, we decided to add a specific money laundering chapter in our annual International Narcotics Control Strategy Report, or INCSR, beginning with the March, 1988, report. The 1991 report contained a money laundering chapter of 63 pages, with detailed reports covering 122 governments.

The 1989 INCSR provided 13 paragraphs of discussion of the charges against BCCI and its officers resulting from one Customs operation. Followup reports on this investigation of BCCI were provided in the 1990 and 1991 INCSR reports.

What are the factors which made BCCI suitable for money laundering? Setting aside those instances where BCCI managers knowingly promoted money laundering, BCCI seemed attractive to traffickers for the same reasons that other banks have been found attractive.

First, traffickers seek international banks that are sophisticated in wire transfers, that have branches in those parts of the world where they operate, and which permit quick retrieval of funds.

Second, traffickers seek banks in those countries where national banking laws afford maximum secrecy to depositors, permit nominee accounts, and do not provide for close monitoring of cross border transactions or currency movements. These are lessons which we have learned over the past few years.

I would now like to focus on some of the actions we have taken to restrict narcotics related money laundering.

Working bilaterally and through multilateral organizations, the United States has become a leader in the effort to expand the global consensus on good banking practices to prevent narcotics money laundering. Cooperation between the financial and enforcement communities in many governments has improved considerably.

This has been influenced by the ratification of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Vienna Convention, the adoption of the recommendations of the Financial Action Task Force, the approval of the European Community's new policy directive, and other commitments, and especially by the deliberations which led to the drafting and approval of these international accords.

In accord with the Vienna Convention and the Financial Action Task Force recommendations, numerous countries have adopted or are now deliberating on provisions which criminalize money laundering, regulate the flow of currency and monetary instruments, mandate records of currency and other monetary instrument transactions, require declarations of beneficial owners of accounts, and compel disclosure of suspicious transactions.

The challenge, however, is becoming more complex. As we noted in our 1991 report, we are detecting money laundering schemes involving a second tier of countries which were not of major concern to us 3 years ago. Traffickers, and more particularly their profes-

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sional money managers, are actively seeking those countries and territories where there are central banks with minimal capabilities, financial systems with limited controls on foreign exchange, and restrictive bank secrecy practices. We are responding by extending the dialog throughout the world.

While compliance with the Vienna Convention and the Financial Action Task Force recommendations will remain high priorities, the challenge for the future will also include the application of these same standards to nonbank financial institutions.

We need to work to tighten requirements for incorporating or licensing businesses which might engage in financial transactions or make use of bearer shares or certificates. We need to develop means to regulate exchange houses and other traditional family financial systems, which are at the core of financial exchanges in many developing countries around the world.

In summary, Mr. Chairman, we have been aware of BCCI's involvement in narcotics money laundering for several years and have indicated that awareness in our reports to Congress. Working with officials at Justice and Treasury, we have formulated recommendations for the Financial Action Task Force and other multilateral organizations, as well as for use in our bilateral negotiations with other financial center countries on cooperative countermeasures.

We have made important progress in the last few years, but there is a lot more to be done.

Senator KERRY. Thank you very much, Mr. Smith. Mr. Pope.

TESTIMONY OF LAURENCE POPE, ASSOCIATE COORDINATOR FOR COUNTER-TERRORISM, DEPARTMENT OF STATE.

Mr. POPE. Thank you, Mr. Chairman.

Mr. Chairman, I am Larry Pope, Associate Coordinator for Counter-Terrorism for the State Department.

On August 1, Peter Burleigh submitted a prepared written statement for the record. His statement summarized the links between BCCI and terrorism as follows.

In 1986, the intelligence community developed and disseminated information that linked the Abu Nidal organization and its activities to a BCCI branch in Europe through the use of front companies. The ANO traded profitably——

Senator KERRY. What's the date on that, again? I'm sorry?

Mr. POPE. 1986, sir.

Senator KERRY. 1986.

Mr. POPE. The ANO traded profitably and successfully in weapons, construction services, and other business enterprises. Based on the information developed by the intelligence community, we launched a major diplomatic effort to have the concerned governments, which included the previous communist regimes in East Germany as well as Poland, expel the ANO personnel responsible for these businesses and to close down the companies themselves.

The efforts we made with other governments to disrupt the ANO's commercial activities were successful. The business front companies that financed a major portion of ANO's activities have been shut down. Since the August 1 hearing, the full report pre-

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pared in 1987 on the ANO front companies on which Mr. Burleigh's statement was based has been declassified. Copies of that report have been provided to Subcommittee staff.

We have continued to review the available information with regard to BCCI's connections to international terrorism. We have not uncovered any information indicating that the ANO or any other terrorist group received financial backing from BCCI.

In a few instances, terrorist groups other than the ANO and one state sponsor of terrorism maintained accounts with BCCI branches. I regret that I'm unable to be more specific in a public hearing.

Mr. Chairman, at the request of the committee staff, we have also looked into the allegations which have been made in the press about Mr. Mohammed Hammoud, a Lebanese businessman and shareholder in BCCI, who died last year, with regard to his possible links to terrorist groups like Hizbullah. We do not have information which would support these allegations.

Subcommittee staff has also asked about a possible connection of the Qassar brothers to BCCI. Mondher and Ghassan Qassar have been notorious for their involvement in an arms and narcotics smuggling network which has provided revenue for the operation of several terrorist groups, including the Abu Nidal organization.

The white paper, which we have made available to the committee, discusses their activities in detail and their close connection to the business activities of the ANO, which we worked successfully to breakup.

We also know that the ANO had a banking relationship with BCCI. But we are not aware of evidence linking the Qassar brothers to BCCI directly, although this is plausible given their connections to the ANO.

As investigation into BCCI affairs by appropriate law enforcement agencies here and overseas continues, we may learn more. We will continue to followup any leads aggressively from the counterterrorism point of view.

Thank you.

Senator KERRY. Thank you very much.

Let me begin, if I can, well, let me sort of run across the board here.

First reports of the State Department on terrorism were in 1986?

Mr. POPE. First reports of the connection between BCCI and the Abu Nidal organizations.

Senator KERRY. Were in 1986?

Mr. POPE. That's correct, sir.

Senator KERRY. And drug involvement, money laundering, first knowledge?

Mr. SMITH. Actually, first knowledge was in 1987, from an investigation which was then underway and which was mentioned in our 1988 report without giving the name of the bank. We were able, in the 1989 report, to mention BCCI specifically.

Senator KERRY. Well, that was publicly. You had no other knowledge of their involvement in money laundering or drug activities prior to that, even with the existence of five or so branches in Medellin?

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Mr. SMITH. We would have seen the earlier reports. But the specific details were provided by the investigations which were underway in 1987.

Senator KERRY. So you relied on the law enforcement investigations for your knowledge?

Mr. SMITH. That was the primary source of our knowledge. Yes, sir.

Senator KERRY. You didn't gain it through State Department personnel in Colombia?

Mr. SMITH. No, sir.

Senator KERRY. You didn't gain it from State Department personnel in Panama?

Mr. SMITH. No, sir.

Senator KERRY. Or any other Latin American countries?

Mr. SMITH. No, sir.

Senator KERRY. There have been no reports, no cables, no information whatsoever in the State Department about banks' involvement in money laundering prior to that?

Mr. SMITH. I believe we've done a complete search of our files and this is what we've come up with, sir. We can check again if you wish. But we have conducted a search.

Senator KERRY. Well, if you're convinced you've done a complete search, I don't want you to—I mean, if you've done a complete search—and I see heads nodding—I take it at face value that that's when you had your first reports.

Mr. Kerr, what circumstances led to the CIA becoming interested in BCCI originally, do you know?

Mr. KERR. Well, Senator, as I indicated earlier, we had an operational lead early on in the mid-1980's that led us to focus on it, that identified it with money laundering. So that initial focus turned around the issue of narcotics money laundering, and that provided the impetus for the future focus of collection, which led to a variety of others.

Senator KERRY. And that began in the early 1980's?

Mr. KERR. In the—do you know precisely? [Pause.]

1983–84 would be the timeframe.

Senator KERRY. So in 1983–84, you were gaining information regarding money laundering. Who did you disseminate that information to?

Mr. KERR. We'd have to go through specific reports. But, generally, our dissemination list, as I indicated, included the intelligence community, State Department, the FBI, Treasury, and because area of narcotics, obviously to those organizations involved in counternarcotics in this country. So it's tailored by our distribution. It's to some degree tailored by the nature of the reporting with terrorism going to one set of customers, narcotics information going to another, and banking information going to another.

Senator KERRY. Each and ever one of those activities would have involved breaking the law, is that correct?

Mr. KERR. I'm sorry? Each activity?

Senator KERRY. Well, each of those activities represented legal infractions, didn't they—money laundering, drug smuggling, terrorism?

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Mr. KERR. My assumption is that some of those clearly would involve the breaking of U.S. law. Others would involve breaking internal, local laws of foreign countries. So there's probably two different kinds of laws being broken. We obviously have obligations within the intelligence community when U.S. laws are broken to pass that information to Justice and to our own law enforcement agencies. We don't have a similar obligation, obviously, when foreign laws are broken.

Senator KERRY. Agreed.

You made a judgment that in 1985, you said in your testimony, you issued a report that since 1981, BCCI owned First American. Is that accurate?

Mr. KERR. I think that's a correct statement. Yes.

Senator KERRY. And in 1985, when you made that judgment, to whom did you disseminate that information?

Mr. KERR. Principally to Commerce and to Treasury, although our understanding is the Comptroller of the Currency was informed by Treasury.

Senator KERRY. Was Justice informed?

Mr. KERR. I don't believe on that particular report; it was not informed.

Senator KERRY. Was DEA?

Mr. KERR. DEA? I doubt if it was because that was not, again, a narcotics issue. It was a banking issue, as we would see it.

I think in this case we would see as Treasury our principal customer in the United States intelligence community.

Senator KERRY. Was the Fed Reserve?

Mr. KERR. No.

Senator KERRY. The Fed was not informed?

Mr. KERR. No. My understanding was it was not.

Senator KERRY. Is there any reason that the Fed would not be informed that a bank was illegally owned in the United States?

Mr. KERR. Our assumption at this point in time I believe was—and it's hard going back that long to know exactly why a report. We have two issues, though: the first is the sensitivity of the sourcing of the information, and the second was that Treasury, again, was our, what we believed to be our principal customer on information of this sort. And our arrangements, by the way, with Treasury, as with State and with others, is that we have an intelligence component or an intelligence organization that is essentially counterpart organization in each of those organizations that we deal with.

Senator KERRY. Now, in retrospect, does this compartmentalizing and source issue confront us with a dilemma with respect to the other interests that the banking community might have had?

I mean, here you have Messrs. Clifford and Altman now hauled before committees and investigations. You have serious issues about the impact on other countries of what has happened, as testified to by the State Department. You have millions of small depositors who have been affected, not to mention a lot of businesses and so forth, as a consequence of BCCI being able to continue to do what it was doing.

Now, you had knowledge in 1985 that, since 1981, First American, by the judgment of the CIA, was "owned by BCCI."

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Messrs. Clifford and Altman are saying they didn't know that. Where do you wind up with respect to a responsibility in terms of the banking laws of this country and the interests of the financial regulators being able to enforce that law and guarantee the soundness and safety, if you will, of the banking structure?

Mr. KERR. Well, it's easy in hindsight to make judgments about what the CIA should have done, given the way things have developed. Obviously, if we had that kind of hindsight, we might have done it differently. However, at that time, I think we saw Treasury as our principal customer. We understood Treasury informed the Office of the Comptroller of the Currency. To us, that was a very specific and direct responsibility.

Senator KERRY. So, in other words, you would say that you feel you informed the people who needed to be informed——

Mr. KERR. Yes.

Senator KERRY [continuing]. And they should have done something with it?

Mr. KERR. You'll have to ask them about their own view of that and the context they placed it in and their subsequent view of it.

But, even in hindsight, I think that was the appropriate customer for us. In hindsight, if we had added the Federal Reserve on, that probably would have been useful for this hearing and we would have been able to demonstrate dissemination to one more customer, and it might have been useful at that point in time. But, again, our perspective on that was that Treasury would be the logical place to receive the information.

Senator KERRY. I understand.

In retrospect, does that mean that there should be a broader dissemination list? Does it mean there should be a stricter set of guidelines as to how that kind of information is used from now on?

Mr. KERR. As I've indicated to you, we are looking at our own dissemination practices to see if we can make sure that we do disseminate our product to the right person. It's a continual drama, after all to know who's involved in what issue over a wide range of subjects. You can always improve that, and we are taking steps to improve it.

One of the difficulties I think it's important to recognize is that, as intelligence officers, while we have some reasonable insight into a lot of issues, we do not necessarily have full insight into necessarily what breaks the law in terms of banking, or the details of banking regulations. We really have to count on others to provide that detail.

We have, obviously, an overview of that and have some sense of what is legal and illegal. But when you get into the fine points of the acquisition of holding companies, you begin to go beyond our expertise, and also, as I said, we are not an investigative unit. We are essentially collecting intelligence for a very specific purpose. That purpose, quite simply, in this case was primarily, again, aimed at the illegal activities that BCCI was involved in—narcotics money laundering, terrorism, support to terrorism, and other activities such as that.

Senator KERRY. Well, how many reports would you say that you——

Mr. KERR. Several hundred.

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Senator KERRY [continuing]. Disseminated through the community? Several hundred reports?

Mr. KERR. Yes. During this timeframe, we disseminated several hundred.

Senator KERRY. And these several hundred reports referred to?

Mr. KERR. Primarily in the narcotics area, in terrorism and in other reports of other kinds of activities, arms transfers and reports of——

Senator KERRY. When did you first start sending reports of terrorist activities?

Mr. KERR. Let me ask for specifics. [Pause.]

1986, I'm told, is the first report on terrorist activities.

Senator KERRY. When did you send reports with respect to narcotics activities?

Mr. KERR. That would go back into the earlier timeframe, probably back in—would that be back in 1983? [Pause.]

From 1984 on.

Senator KERRY. And when did you send reports with respect to, the first report, I take it, with respect to the ownership issue, was 1985?

Mr. KERR. That's right, early 1985.

Senator KERRY. So, in 1984–85, you began generating a fair amount of traffic on this issue, is that fair to say?

Mr. KERR. That's fair to say. We began at that point in time.

As I said earlier, we had an operational lead that led us to a focus, led us to focus our attention. As you might expect, we're a worldwide organization that has a lot of interests. And so, we tend, if we pick up a lead or a particular activity, then we focus some additional resources on it. But we are spread very thin when it comes to looking at all activities of everyone, everywhere.

Senator KERRY. Now, in your opening statement, you did mention that you provided information to the Fed. What kind of information was that?

Mr. KERR. Well, we have provided information and they are on our dissemination list for some products.

Senator KERRY. With respect to BCCI particularly.

Mr. KERR. I believe they were on dissemination lists for a subsequent report. [Pause.]

They got reporting, but not the initial report, though, in 1985.

Senator KERRY. Did they in any of the subsequent reports receive notice about the ownership that you reported in 1985?

Mr. KERR. I believe so. Yes.

Senator KERRY. You do believe so?

Mr. KERR. Let me ask Ted Price, who can be a little more specific.

Senator KERRY. OK.

Mr. KERR. He was saying we did not provide specific information to the Federal Reserve on the ownership issue.

Senator KERRY. Why did the CIA choose to use First American as a depository when it knew it was controlled by BCCI?

Mr. KERR. I assume the same reason a lot of other people used it, as a normal bank. It was used to transfer money to hold accounts, savings accounts, and other activities for us. But it is not a, it is

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not an operation, used operationally. It was used as a repository for normal banking.

Senator KERRY. So the fact that you were generating reports on terrorist activities, the fact that you were generating reports on narcotrafficking activities, the fact that you had an illegal ownership situation didn't give you any alarm bells about using this——

Mr. KERR. But be specific about that, Senator, and that is our information was not on First American, what you just described. Our information about that activity, terrorism and counternarcotics, was on BCCI. We do not, number one, collect intelligence on domestic organizations, and we did not see——

Senator KERRY. You do not do that now, right?

Mr. KERR [continuing]. We did not see a link in terms of the activities of First American. In other words, we had no reason to suspect First American of any of the things you just described.

Senator KERRY. And so, the fact that First America was, according to your determination, owned by BCCI didn't matter? You considered it a separate entity?

Mr. KERR. I don't think that was a consideration in terms of our own banking activities domestically. No.

Senator KERRY. Now what about, I take it the CIA was aware that President Carter traveled to China, traveled to other countries in the presence of Mr. Abedi on a BCCI airplane.

Mr. KERR. I wouldn't assume that. Obviously, we'd know where President Carter was going just from reading the news. But I'm not sure we had identified particularly, you know, the mode of his travel or his association. Again, we don't collect intelligence on our former Presidents or U.S. citizens.

Senator KERRY. If a President of the United States—well, I take it you had an interest in the bank. I mean, you've said that.

Mr. KERR. Certainly.

Senator KERRY. Correct?

Mr. KERR. Yes.

Senator KERRY. And you were watching the bank very carefully, correct?

Mr. KERR. Again, I would say, though, it's very important to say we were watching it in terms of very specific objectives. We were not watching it as a financial institution. We were not watching the leadership in terms of its movements or its activities.

What we were watching, or what we were trying to do is collect information that we felt from our perspective, affected the national security interest—I go back to that. That was the focus.

Senator KERRY. Was it of national security interest to you that this bank might be trying to gain a foothold in the United States in order to further specific Third World or Pakkistani interests?

Mr. KERR. It was sufficiently of interest to us that we provided that report to Treasury in the 1985 timeframe.

Senator KERRY. If that is of interest to you, wouldn't it be rather important to you to evaluate what Mr. Abedi, the head of that organization, might be doing with a former President of the United States?

Mr. KERR. I don't think so. I think that would be, I'm not sure those two are logically connected and I'm not sure we did.

I wouldn't, personally.

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Senator KERRY. Would you not have been concerned about this bank that you knew was involved in narcoterrorism, knew was involved in terrorism itself, and that you knew had an illegal ownership, that it was openly appealing to the many interests in this country? Did that get relayed to anybody?

Was there any flag raised saying people ought to be notified here that this is not a good bank and they're getting sucked in?

Mr. KERR. No. Let me go back again.

I said we had several hundred reports that we provided on that general kind of activity. It seems to me that is our obligation, to provide the information to the appropriate organizations and to consistently continue to collect, and we did exactly that.

Senator KERRY. Did you notify those people who could have brought legal action against this bank for its activities?

Mr. KERR. We provide information to our oversight committees and to the Congress on a wide range of things, and to the principal executive organizations involved in law enforcement and intelligence, and in policy. I think that is our obligation, and we did precisely that.

Senator KERRY. Did several hundred reports go to law enforcement?

Mr. KERR. I don't know the precise number, but certainly a large number went. Of that, certainly several hundred were disseminated. I would say most of, many of them, depending, again, on the subject, would go to DEA, to the FBI, which is our principal conduit for intelligence, and to other intelligence organizations and then to policy organizations.

Senator KERRY. Could you, Mr. Kerr, provide the committee with a categorization of those reports, a breakdown of who the reports went to and what reports went to people over the period of that time?

Mr. KERR. I don't see why we cannot do that. It seems to me that's appropriate.

Senator KERRY. I think it would be helpful for us to understand that.

Mr. KERR. We'll provide a general characterization of the number, of roughly the numbers in closed testimony.

Senator KERRY. Is there any reason that the committee couldn't have the reports submitted to 207?

Mr. KERR. I'd prefer not to do that. But we can talk about how we might do that. Our problem with disseminating individual reports is we come very close to a sources and methods problem.

Senator KERRY. No, no, no. I'm not talking about disseminating. Could we put them in the intelligence safe over there, so that I, at least with code clearance, could review them?

Mr. KERR. I'd be glad to pursue that with you, sir, and work out some arrangement.

Senator KERRY. Is this going to be one of those long pursuits, or can we? [General laughter.]

Mr. KERR. Well, I would rather—I'd like to look carefully at what we are talking about and how we are going to do that, and talk to our oversight committee about it, and then let us pursue that, certainly.

Senator KERRY. Well, let us pursue that.

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Mr. KERR. Let us pursue it.

Senator KERRY. We will pursue that.

Mr. KERR. My problem with that, if I might add, is that we would be glad to characterize them for you. We'll be glad to give you a briefing on them. We are a little hesitant when it comes to providing access to individual, raw reporting that describes sources and——

Senator KERRY. Well, you have provided it to each of these Departments.

Mr. KERR. Yes; individually, yes.

Senator KERRY. Correct?

Mr. KERR. Yes.

Senator KERRY. So if they can get it, I believe the U.S. Senate can get it. Is that fair?

Mr. KERR. Fair. A U.S. Senator can. We will talk further about it.

Senator KERRY. Thank you.

Now, what did you learn about BCCI's involvement in the facilitating of drug trafficking or drug money laundering?

Mr. KERR. I think it's difficult to go much further into this area except to repeat what I said earlier, and that is that we did learn that there were, in a number of countries, as my colleagues here said that BCCI branches were facilitating the introduction of large sums of money out of the narcotics business into the banking system.

Senator KERRY. In how many countries would you say that was taking place?

Mr. KERR. I would defer. Earlier, I heard the number that you gave. I don't have a precise number.

Mr. SMITH. We have a number of ten, which is drawn from investigations conducted by the investigative parts of the U.S. Government.

Senator KERRY. When did the CIA learn about BCCI's involvement in financing international arms trade?

Mr. KERR. A specific date I don't know. There are only a few reports of that. That is not an extensive body of information, and I don't have—let me ask—I don't have a precise date. But we certainly can provide that date to you, Senator.

[The information referred to follows:]

The CIA advised the subcommittee on November 22, 1991, that the date the CIA learned of BCCI's involvement in financing the international arms trade was 1987.

Senator KERRY. Do you recall how many instances or how significant the arms trafficking information might have been?

Mr. KERR. I think that, again, I can characterize it a little better in a closed session, but let me just take a stab at it and say that those are indirect, and what you have are activities on the part of a bank official to move weapons or to facilitate the movement of weapons between two countries. So it is a facilitating role.

Senator KERRY. But you did learn the bank was involved in that facilitating role?

Mr. KERR. Yes, we did.

Senator KERRY. Fine. I think that's the key.

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What did you learn about BCCI's involvement in the handling of finances of terrorist organizations?

Mr. KERR. Again, I think the characterization we had earlier was that that is somewhat indirect. Probably, again, I'd prefer, because of our continuing interest in this area, to not detail it. But it is primarily, again, as front men for activities on the part of terrorists and helping them with their own front companies primarily in funding mechanisms for terrorism.

Senator KERRY. Did you learn and are you able to state how widespread that was within the bank structure itself?

Mr. KERR. I think it would be fair to say it was not—I mean, our knowledge of it was certainly not extensive. It's rather limited.

Senator KERRY. Fairly narrow——

Mr. KERR. Yes.

Senator KERRY [continuing]. To the top echelon, so to speak, to a narrow group of people?

Mr. KERR. Well, it's limited to a specific number of very few branches and to a very specific number of organizations. I think it would be unfair——

Senator KERRY. Fair enough.

Mr. KERR [continuing]. To characterize it as widespread and extensive.

Senator KERRY. That's what I'm trying to get at. That's fair.

What about knowledge of involvement in the movement of prohibited technologies to countries who weren't able to get those technologies on the open market?

Mr. KERR. My own view of that—and I'll have to ask the people behind me who know the details—I don't think there is specific evidence in the technology area. There's clearly evidence of material or weapons that were not, that would not have an appropriate end user, that would not be appropriate. But I don't know of a technology issue. [Pause.]

Senator KERRY. Did you want to add?

Mr. KERR. That's accurate.

Senator KERRY. Did you learn anything about BCCI's involvement in making bribes or payoffs, or any other forms of payments to foreign political leaders or heads of state or other high-ranking officials?

Mr. KERR. I don't think we have specific information on that, direct information.

Senator KERRY. So there were no reports with respect to any of those matters contained in these reports you made, these over 200 or so reports?

Mr. KERR. There is certainly a small number that talk about corruption or kind of sharp practices and ways to avoid local taxes—I mean, in that sense. But I think that would be the nature of the kind of reporting.

Is that fair? [Pause.]

Mr. KERR. That's, I think, a fair description of it. I think of the kind you are talking about, the kind of issue, I would say no.

Senator KERRY. Did the CIA learn anything about specific services provided to the Government of China by BCCI?

Mr. KERR. No.

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Senator KERRY. Did you learn anything about the involvement of BCCI in the acquisition of proscribed technologies for Iraq?

Mr. KERR. Again, I think there is some evidence of arms——

Senator KERRY. Through BCCI?

Mr. KERR [continuing]. Through BCCI using a front. There is some, I know, specific. But I think an arms, this is not major high technology.

Senator KERRY. What did the CIA learn with respect to the relationship with Manuel Noriega and Panama?

Mr. KERR. On that issue, I think it would be inappropriate, given the nature of the trial; the Justice Department would prefer me not to talk about issues that involve Noriega.

I think that's probably appropriate guidance for me.

Senator KERRY. Can you perhaps at least confirm to the committee that you, through those, that in those reports to other agencies, there were reports of involvement?

Mr. KERR. What I can say is we did collect on involvement between BCCI, obviously, in Panama and the use of BCCI Panama by major narcotics traffickers. I don't think you can, I don't think you can, in fact, carry that statement beyond that, too specifically to Noriega.

Senator KERRY. I won't. We can take that up in private session. But I just want to establish, and I think it's important to do so on the record, that you gained information about that.

What about BCCI's activities in Colombia, including involvement with drug traffickers and government officials there?

Mr. KERR. Again, there is reporting on drug trafficking in Colombia, and the use, as I described earlier, of BCCI as an entry point for laundering money.

Senator KERRY. What about BCCI services provided to the Government of Pakistan?

Mr. KERR. I don't have specific information on that, on the Government of Pakistan. I don't think there is specific intelligence that would support that.

Senator KERRY. Can you share with the committee what the CIA learned about BCCI's secret purchase of First American in Washington?

Mr. KERR. I cannot do much more than I described to you earlier, and that is that in early 1985, we provided, we had information indicating that BCCI had acquired the holding company as early as 1981, and we provided that information in report form. But we have very little other to say about that. In fact, there is very little more to say about that. We got subsequent information on that issue later, but it did not change the fundamental report of 1985.

Senator KERRY. How would you describe the nature and extent of the agency's use of BCCI for its operations?

Mr. KERR. We used it as a normal bank to move money with accounts in that bank. As I said, we used it. Those accounts were associated with lawful and authorized activities that have been briefed to our oversight committees. So there's nothing that we were doing that they were not aware of.

We also used it as an access mechanism to collect against the bank itself. The amounts involved are relatively small, are quite small relative to the size of the bank and to our own activities.

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Senator KERRY. How many accounts would you say there were, Mr. Kerr?

Mr. KERR. I'd rather not specify them, if I can. But there were not very many.

Senator KERRY. Did BCCI employees know of that?

Mr. KERR. No, they did not.

Senator KERRY. No employees anywhere in BCCI were aware of this?

Mr. KERR. No. Officials in the bank were not aware of the use that we were putting the accounts to.

Senator KERRY. Was that true initially of First American also?

Mr. KERR. Well, First American is quite a different matter, after all, a U.S. bank with domestic accounts where——

Senator KERRY. Oh, I understand. I'm just curious.

Mr. KERR. Certainly, they knew that there were ACI accounts. First American did. I mean, they are open, acknowledged accounts. Is that fair? [Pause.]

Some of them are.

Senator KERRY. Now you say that under no circumstances, you have said that First American was a target?

Mr. KERR. Yes.

Senator KERRY. And BCCI became a target when?

Mr. KERR. The mid-1980's, 1983, I think. Yes.

Senator KERRY. So, given Mr. Abedi's contacts within the intelligence community or given his perception that something was happening with respect to his bank—i.e., I think he felt that people were following him, questions were being asked of people, somehow there was an interest in the bank—it would not be inconsistent for him to say, which he is alleged to have said by a number of people, Mr. Bert Lance, Mr. Sakhia, and Mr. Rahman have all said Mr. Abedi felt the bank was on the CIA watch list. So, there's a consistency, I take it, between the timeframe of your saying BCCI was targeted and his perception that something was going on with the CIA, as he characterized it, the CIA watch list.

Mr. KERR. I wouldn't accept that at all. I wouldn't accept that connection as at all legitimate.

One, hopefully and presumably, he did not know his bank was being targeted by us. None of his employees did, and we were doing it in a way so that he wouldn't know. That was the whole object of it, nor would anybody in the BCCI. So I think the idea——

Senator KERRY. Well, could there have been a leak through this intelligence network somehow? He seemed pretty sure of it?

Mr. KERR. Well, you'll have to talk to him. It depends on whether you have confidence in what he says or what I'm saying right now. And what I say is that, in fact, it may have been, I mean, we can never, you never say "never," obviously; but, in fact, we know of no connection.

Senator KERRY. Do you know who a Mr. Bruce Rappaport is?

Mr. KERR. Only vaguely, yes. I know the name.

Senator KERRY. Has he had any dealings with the Agency?

Mr. KERR. I don't know the answer to that personally.

Senator KERRY. Do any of your answers behind you know the answer to that? [Pause.]

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Mr. KERR. That's an issue we would prefer to talk about in closed session.

Senator KERRY. How about a Mr. Alfred Hartman?

Mr. KERR. Sir, I would rather not go down a list of people and determine whether or not we know them or not. I think that's inappropriate.

Senator KERRY. That's fair. I won't do that. That's fair.

Why don't we go through that part of it during the closed session.

I do have some more questions, but let me turn to my colleague. Senator Brown.

Senator BROWN. Thank you, Mr. Chairman. I have just a couple of questions here.

Mr. Kerr, have you identified who within your organization was charged with dissemination of this 1985 report and made the decision not to forward it to the Federal Reserve?

Mr. KERR. The individual involved? I think we know generally the rationale for why it was disseminated the way it was. Yes.

Senator BROWN. Do we know who made that decision to not identify the Federal Reserve?

Mr. KERR. I don't think I would put it that way. I think it was a decision to notify Treasury, and I'm not sure whether it was a conscious decision not to notify the Federal Reserve at all.

We went to what we thought was our principal customer in that area. So I'm not sure I would phrase the question the way you just did.

Senator BROWN. Let me try again.

We're all products of the training we have. My training was that somebody's supposed to take responsibility——

Mr. KERR. Someone did take responsibility.

Senator BROWN [continuing]. And when a decision is made that is a bad decision, you identify who made it.

Mr. KERR. I'm not sure it was a bad decision.

Senator BROWN. Well, you may feel that a failure to get information about a criminal activity to the Federal Reserve is not; I have a different view of it. That's an honest difference of opinion.

I guess my question is have you identified who made this decision?

Mr. KERR. I have not. I don't think we've identified the particular individual. But we know the group that it came out of. We know the individuals that were involved in it. But the answer is yes, we would be able to—but I'm, I don't know what the point of that question is.

Senator BROWN. Well, the point is very clear. If the decision is made that this kind of conduct of not identifying the appropriate agency is to change, that if your agency is aware of criminal misconduct with regard to banks, an effort to conceal the ownership of banks, that the conduct of the agency in the future should be different. The only way I think you make a change in that is to identify who is in charge of making this decision.

Mr. KERR. Well, in that regard, Senator, I can say, as I mentioned to Senator Kerry earlier, we have looked at our own decisionmaking process about how we disseminate reporting. We are looking at it with the benefit of hindsight. We tend to learn by our

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own experiences. So we are going to examine that rather carefully, and you can rest assured that we will look with greater care on that at that time.

However, even in hindsight, I think the decision that was made, to give it to Treasury, that gave it to the Office of Comptroller of the Currency, was a legitimate decision based on our understanding of who the logical people were that had responsibility for it. So we are looking at our own practices, and we will look at our own process. That's one thing our Inspector General, in his review, looking at it, suggested that that's an area where we need to look at our own consistency and our own dissemination of reports, and we are doing that.

Senator BROWN. I guess the question then is—and perhaps you've answered it—is that you have not identified who was in charge of this area and who made this decision, and you have not disciplined him.

Mr. KERR. I am not going to discipline anybody for that mistake. That was an honest mistake, and I wouldn't think of doing that.

Errors of judgment, I might add——

Senator KERRY. Is there a policy change at CIA now as a consequence of this?

Mr. KERR. I wouldn't say a policy change. It is a look. What we are doing is looking, again, at our distribution, how we distribute reports. I said we have worldwide reports on a variety of different issues.

Senator KERRY. Apart from just distributing, I mean, I suppose you could make the decision to just distribute and include six more people on the distribution list. But it doesn't really guarantee that it's going to come to the attention of somebody in that flagged way that says: folks, somebody ought to do something here.

Mr. KERR. That's why we also call specific attention of people to the reports. In fact, we did on this report in 1985, in Treasury. We made a particular point of calling it to their attention. We got specific tasking back on it.

Senator KERRY. Whose attention was it called to in 1985?

Mr. KERR. I'm not sure of the individual at this point in time. But it was discussed with the individual in the intelligence area of Treasury. We got some specific requirements back on it.

So we felt we had done, essentially done, our particular job in this.

Senator KERRY. But did it go to the Secretary level? Did it ever get to sort of a decision——

Mr. KERR. I don't know the answer to that, whether it was called to the attention of the Secretary.

Senator KERRY. My question to you is do you think it should be, now, retrospectively? Do you think that there ought to be a policy change that says: hey, folks, if we come across illegal activity in the course of our intelligence gathering that reflects on U.S. Government law that ought to be enforced, we now have an obligation to give it to so-and- so? Is that there?

Mr. KERR. I don't think, quite simply, that's a practical—given the volume and the nature of the intelligence business, and any general rule about that. It requires judgment, it requires a variety of different things in the process.

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I think any general rule that says you give everything in a particular category to a certain group probably would be unwise, given the nature, and the complexity, and the volume of information of the category you're talking about.

So I think you have to have within organizations people who are responsible for making decisions. In this case, we did. Even in hindsight I would say we gave it to the right people. We called it to their attention. We followed up with information. So I feel relatively comfortable about that.

Would I have now preferred to have given it to others? The answer is yes. I mean, hindsight is a marvelous thing, it gives clarity to your understanding.

Senator BROWN. Well, pardon me. But this was criminal behavior.

Mr. KERR. And it was given to the——

Senator BROWN. It doesn't take a genius to figure out when criminal behavior is going on, you let the applicable agency know that something is——

Mr. KERR. And we believe we did that.

Senator BROWN. Well, can you tell us who at Treasury this was sent to?

Mr. KERR. It was sent to the chief of intelligence at Treasury and called to their attention.

Senator KERRY. But intelligence, I mean, this gets back to the training issue that Senator Brown brought up. They're going to see this in intelligence terms. They're going to see this in the context of just sort of a day-to-day missive, are they not?

Mr. KERR. I don't think that's true.

I think a policy organization that has intelligence, just like State's INR, sees their intelligence in policy terms.

Senator KERRY. And evaluates it?

Mr. KERR. That's their job, and that's the nature of the way they look at it.

I think that, again, is quite a legitimate process.

Senator BROWN. We are going to get a copy of the report. I know you're trying to work that out. So I think it's helpful.

But can you give us any idea? Was this flagged in a way that it was noted for attention?

Mr. KERR. It was flagged and noted. Yes.

Senator BROWN. Thank you.

Senator KERRY. Is there a policy—this is a little bit afield, but it's not afield. It's something that has interested this committee over a number of years. In fact, the original investigation of this committee grew out of a sense of this conflict.

We have had witnesses in the Noriega trial who have already testified publicly that they flew weapons one place and flew drugs back, the other. And it was because they were acting sort of under cover of "intelligence"—not official, but, you know, under that cover—that they were able to do that.

There has been a legion of allegations over the years of this confusion between intelligence goals and the need for secrecy, and the need to maintain sources, and the need sometimes to deal with really nefarious types in order to get the information you need to get, and then what they're doing, the activity they're engaged in

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and the impact that might have on us of your keeping those sources secret.

Has there been a review of that kind of issue? I mean, I'm really talking about narcotics trafficking. When you have money launderers and narcotics dealers who are also intelligence sources of one kind or another, maybe a third party source to somebody in another country whom you've sourced or something, what happens? Is there a tension there?

Mr. KERR. Certainly there is a tension. It's an issue of constant concern. It's an issue where we have some very specific instructions and direction in terms of our ability to deal directly with narcotics traffickers. There's a very complicated process for that, and a vetting process.

It is, as you say, a very difficult process. It's a little, however, like saying that the police shouldn't deal with criminals. To collect intelligence, you need to deal with people who are the targets.

Senator KERRY. Absolutely.

Mr. KERR. And so, it's a very complex issue. But we have oversight mechanisms that we report to on this issue. We have some very specific guidance as to how we deal and work with people who are involved in narcotics, the trade. And so, it is a very explicit set of guidelines.

If anything, it is prohibitive to the point where it makes it difficult to deal with the narcotics trafficking business. But it is certainly complicated. There certainly is a review process, and it is an ongoing review. I mean, it just doesn't happen once a year or once a month. It happens with every specific activity.

Senator KERRY. Did you receive any information at the Agency regarding BCCI or any other entity or agent of the U.S. handling Public Law 480 transport commodity credits or other things for the Department of Agriculture programs? Did you get any information on that?

I see heads shaking in the back.

Mr. KERR. That's not an issue we would be involved in except in the most peripheral way. I can't think of any specific example.

Senator KERRY. With respect to the BCCI involvement with the financial arrangement of Mr. Ghorbanifar and Mr. Khashoggi in connection with Iran-Contra, there are documents showing $10 million through two Canadians for TOW missiles that were going to go to the Ayatollah, with $1 million in additional funds that were going to be generated and split between Khashoggi and BCCI. This is documented as well as testified to. It was aborted when our officials grew wary of Ghorbanifar.

Did the CIA have any information with respect to that transaction or any role in it?

Mr. KERR. That's an issue I really don't know enough about to answer specifically about it. When you say "any role or information," that's one I would have to, it's kind of off this main, principal subject, and I'm just not prepared to answer it, I'm afraid.

Senator KERRY. Well, the reason I think it's part of the subject is it's a BCCI transaction involving secret accounts and involving figures who have already shown up with significant ties about whom our community, I take it, was pretty aware.

Mr. KERR. To my knowledge—and I think that's——

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Senator KERRY. If you can't answer it now, Mr. Kerr, I understand.

Mr. KERR. Yes.

Senator KERRY. But what I would like to do is get an answer to that, if we can.

Mr. KERR. Well, we can do that. I was going to see if I could go back to my own notes and see if I could provide a specific on that.

Senator KERRY. Well, are you aware of Mr. Khashoggi sending a New York oil man by the name of Roy Furmark to the CIA?

Mr. KERR. I know that based on testimony and a whole variety of other things. Yes.

Senator KERRY. So you know that Mr. Khashoggi sent a messenger to Langley to warm Mr. Casey that the Canadians were feeling swindled and were going to go public? That took place?

Mr. KERR. I know that. But I'm not sure what the relevance of that is to this issue of BCCI.

Senator KERRY. Well, because this was all part of the same transaction. This was Mr. Khashoggi with the $10 million that was aborted, and BCCI was a part of that.

So the question I'm asking is whether the Agency had knowledge of or involvement in that particular transaction.

Mr. KERR. Let me go back to my testimony and I will certainly followup and make sure, and that is that CIA was not involved or did not have any knowledge of the use of BCCI for the sale of arms to Iran or the diversion of funds for the Nicaraguan Contras.

Senator KERRY. Or could it be that it had knowledge of this particular transaction, which had nothing to do with those two transactions you just cited?

Mr. KERR. Certainly in hindsight, and there were people who have testified that they had knowledge of it, like Charlie Allen, I believe.

Senator KERRY. Well, if we could, followup on that.

Mr. KERR. If you could give us a specific question, we would be glad to followup.

[The information referred to follows:]

This issue was addressed in closed testimony on October 31, 1991.

Senator KERRY. It is accurate, is it not, that the TOW missiles that were to go to Mr. Ghorbanifar to Iraq were going to come from the U.S. Government? Correct?

Mr. KERR. That's my understanding, again, though I'm not sure how relevant that is to this issue.

Senator KERRY. Well, because, the reason it is relevant—I don't want to give you a sense I'm going off into some tangent here, I'm not—it's a BCCI facilitated transaction, or so it is alleged. I'm trying to understand from our side of the fence what we knew about it. We have documents showing the transaction in its nascent form. The question is to what degree we may have been leveraging that transaction, pushing it, part of it, or what.

Mr. KERR. Again, I go back. We have no evidence and no knowledge of involvement in the use of BCCI for the sale of arms to Iran or in the Iran-Contra issue. So that's about all I can say. Having said that, I can't do much more.

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Senator KERRY. Do you have any knowledge or did the Agency have any knowledge of a BR&W Industries, Ltd., and its use financed by BCCI for the shipment of TOW missiles?

None that you think of?

Mr. KERR. No, none that I know of.

Senator KERRY. OK.

Let me ask you this.

While the Agency may not have approved of it formally, and while it may not have been transacted through Agency procedures, do you or does the Agency now have any information that Mr. Casey somehow, in that sort of separate series of transactions that he did, used BCCI in connection with the financial transactions related to the Iran-Contra sale?

Mr. KERR. No, I have no knowledge, although I would question your own assumption of separate transactions because I don't think there is evidence for that, either. But no. The answer is no.

Senator KERRY. Well, on the contrary, there is evidence, significant evidence, of Oliver North having been dealing with Mr. Casey and talking to him and of information that he was aware of outside of the normal loop with respect to the entire thing that has consumed Mr. North's life for the last few years.

Mr. KERR. I wouldn't want to get into a debate or an argument on that, but I think that evidence is primarily hearsay and not evidence.

Senator KERRY. Well, we're just asking the questions.

Kamal Adham could you define to us what you understood Kamal Adham's role to be in BCCI?

Mr. KERR. I'm afraid I have very little information on that other than what's obvious to you and what has been in the public record.

Senator KERRY. So you have no other information through the Agency?

Mr. KERR. It's not an intelligence, subject of intelligence interest, particularly. We can if you, that's a subject that we might explore if you want to pursue that in closed session.

Senator KERRY. Yes, I would appreciate that, if we could.

The other questions I have here really are closed session questions.

With respect to State Department, if I could just ask you gentlemen, do you see any of our interests, policy interests, now impacted as a consequence of the fallout in any of the countries that you've talked about at this point?

Is there a sense that this has that kind of impact, or is it more of a moving event that will not really have an impact? That is, are the central banking funds of such order that are missing in a particular country that we have to be concerned about the fall of a government or about recriminations that somehow would affect outlook, or anything? Is there any sense of that at this point?

Mr. KRECZKO. Senator, I would hesitate to be too categoric because of the ongoing investigations in, primarily in Latin America, Argentina and Peru, for example. But I think generally, as a general matter, your statement is correct, but depending upon the outcome of investigations in those types of countries.

Senator KERRY. Would it be your perception that attitudes have changed in any of these countries or with any of the nations we're

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currently negotiating with on financial transactions with respect to bank secrecy and money laundering?

Mr. SMITH. Mr. Chairman, I think that attitudes have changed greatly over a period of time on that subject, as evidenced by the responses of countries which have participated in the Financial Action Task Force, the widespread progress on implementing the recommendations of that task force, the attendance by other countries in the regional meetings which the task force members have promoted, the efforts by European countries to eliminate, pierce the veil of bank secrecy, and to take various other steps which would greatly strengthen the system to prevent this type of thing.

Senator KERRY. Why have we not been more successful in doing that in Panama, for instance? Panama has more money laundering today than it did before we had an invasion.

Mr. SMITH. I would say in the case of Panama that we have recently had one action, which I believe has just occurred this week, which is we have sent to the Senate the Mutual Legal Assistance Treaty which we have negotiated with Panama, which will greatly facilitate our ability to deal with the Panamanian Government on issues deriving from money laundering investigations.

Senator KERRY. Could you share with us, Mr. Pope, what terrorist organizations made use of BCCI? Was it only the Abu Nidal?

Mr. POPE. Senator, I'm afraid in this session I can't be more specific on precisely the identity of those organizations because of concerns that Mr. Kerr has alluded to.

Senator KERRY. OK.

Can you tell us what the nature of BCCI's activity was? Did they actually provide financing in addition to providing banking services?

Mr. POPE. No, sir. To the best of our knowledge, it did not include financial backing.

Senator KERRY. So, to the best of your knowledge, it was really just banking service?

Mr. POPE. That's correct, sir.

Senator KERRY. Was there something that made BCCI particularly attractive to these organizations?

Mr. POPE. Yes, I think there was something. It was a bank with a Middle Eastern reputation. Of course, these terrorist organizations were operating in the Middle East. It may have been a bank that had a reputation for providing secrecy and not asking too many questions.

Senator KERRY. Were they involved in financing any state sponsored terrorism, that you know of?

Mr. POPE. Not to the best of my knowledge, sir.

Senator KERRY. Have you been able to evaluate how extensive the involvement of BCCI was with the central banks of countries, or are you still trying to do that?

Mr. KRECZKO. Senator, we do not generally have reports on involvement of central banks. What we can say is that we have reports that in Pakistan, China, Peru, Jamaica, Cameroon, Nigeria, Zimbabwe, and Zambia, central banks or other government agencies may have made reserve deposits with BCCI. But those are reports that we can't necessarily confirm.

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Senator KERRY. Now we've had evidence before this committee of BCCI assisting in the movement of nuclear technology and nuclear grade materials.

Have you had, either the CIA or State Department, similar information?

Mr. KRECZKO. I think, Senator, that some of that would have to be handled in closed session. But there is a case that was prosecuted successfully against a Pakistani national by the name of Parvez for an attempt to procure in the United States nuclear related materials, and BCCI was involved in the financing of that. That's a matter of public record.

I don't believe that there is an indication that BCCI was involved in illegal activity, necessarily. But BCCI was involved in the financing.

Senator KERRY. Mr. Kerr?

Mr. KERR. I think that's, I know nothing beyond what was described.

Senator KERRY. Let's go on, then.

Mr. KERR. I know about the case. Quite simply, I did not know that BCCI was involved in that particular case. But we may have had information on it.

Senator KERRY. Did you have any information, either of your departments, with respect to a sale of jets to Iraq, to Saddam Hussein, through Argentina?

Mr. KERR. No.

Mr. KRECZKO. No.

Senator KERRY. Did you have any information, either of you, with respect to BCCI's involvement with Rajiv Gandhi and his government?

Mr. KRECZKO. No.

Senator KERRY. Did you have any information with respect to BCCI's involvement with government figures in Sri Lanka?

Mr. KRECZKO. No.

Senator KERRY. With respect to Latin America, did you have any information with respect to BCCI's involvement with Alan Garcia in Peru?

Mr. KRECZKO. Senator, we have someone from the Latin America bureau. If I could, I'd ask her to join the table.

Senator KERRY. If you could just identify yourself. Everybody is willing to give up their microphone, I see.

Ms. JACOBSON. I'm Roberta Jacobson. I'm the Deputy Director of the Policy Planning and Coordination Office of the Bureau of Inter-American Affairs.

Our information on Alan Garcia in Peru has come primarily through recent news reports over the past year or so out of Peru. He's been alleged——

Senator KERRY. I realize what he's been alleged to, in the newspapers, but did you have any information from your sources or yourselves with respect to that?

Ms. JACOBSON. We had no information at the time or since then, through our own information.

Senator KERRY. Mr. Kerr.

Mr. KERR. Senator, I think going, again, going through a list is somewhat of a problem for us——

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Senator KERRY. You want to do it in private session.

Mr. KERR [continuing]. Either negatively or positively.

Senator KERRY. Well, I'm not sure. I mean, if you say that we had some information, we don't have to go into what it was. But I think it would be helpful to have a sense of it.

I think it's helpful to know that you didn't have a lot of the information. It indicates something. I mean, it either indicates that—well, I won't get into what it might indicate. [General laughter.]

Leave that alone.

Did you have any information regarding the sale of arms to Iraq at any time, anybody?

Mr. KRECZKO. No.

Senator KERRY. Senator Brown, do you have anything further? [Pause.]

I am just advised by staff that apparently the Fed has already said publicly that you folks provided some information on Kamal Adham. I just wanted to confirm that since they've said it publicly, or not. We won't go into the details of what you may have provided.

But do you recall providing the Fed information on Kamal Adham?

Mr. KERR. I don't know the answer to that.

Senator KERRY. This was before the Fed approved the, this was way back when Financial General Bankshares was in the takeover process, and in the original effort to seek permission for the investors to come in since Kamal Adham was one of the original investors, there was testimony that people checked with intelligence sources, and there was some evidence to the effect that, according to the Fed, that they received information from you, from the Agency—not from you personally—with respect to that.

Does anybody have a recollection of that?

Mr. KERR. We responded, I understand, to a request from them for information, which we subsequently passed. I can't——

Senator KERRY. Is there a record of what might have been passed on?

Mr. KERR. I would assume there would be. Yes.

Senator KERRY. Would you be willing to check that, please——

Mr. KERR. Certainly.

Senator KERRY [continuing]. And see if we could ascertain that? I think it would simply be helpful in completing the record. It's no great issue, but it would help complete the loop here.

[The information referred to follows:]

CENTRAL INTELLIGENCE AGENCY,
WASHINGTON, DC,
November, 22, 1991.

The HON. JOHN F. KERRY,
Chairman, Subcommittee on Terrorism, Narcotics and International Operations, U.S. Senate, Washington, DC. 20510

DEAR MR. CHAIRMAN: Forwarded herewith is the transcript of DDCI Richard Kerr's open testimony presented to your Subcommittee on Terrorism, Narcotics and International Operations on October 25, 1991. Minor textual corrections are noted as requested. This letter also addresses the followup issues from that hearing noting that most of those issues were subsequently addressed in Mr. Kerr's closed testimony to your committee on October 31, 1991. Finally, we have noted several points of correction/elaboration in the open testimony which were addressed in Mr. Kerr's formal statement to the closed hearing or in his commentary there.

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Concerning the followup issues:

a. On page 48 it was agreed that a general characterization of the reporting and numbers of reports would be made available. That material was provided in the closed testimony.

b. On page 51 a specific date was requested relative to learning of BCCI's involvement in financing international arms trade. That date is 1987.

c. On page 59 data on Bruce Rappaport's relationship was requested. That was addressed in closed testimony.

d. On page 70 the question of a BCCI connection with funds for the Contras was addressed. This issue was addressed in closed testimony.

There are four issues from the text—items a through d—requiring either correction or clarification that were addressed in Mr. Kerr's statement at the closed testimony. Item e was addressed in the Q and A in the closed testimony.

a. Pgs. 45–46. It should be noted that in 1988 a member of President Carter's advance team was briefed prior to a trip abroad by the former President about the involvement of BCCI in illegal activities.

b. On page 54 lines 1–4 it should be noted that in contrast to the negative response, the Agency did have a small number of reports on BCCI involvement in third world corruption.

c. On page 54 lines 19–21 the Agency did have some reporting on BCCI being used by third world regimes to acquire weapons and transfer technology.

d. Elaborating on the response on page 79 lines 18–25 and page 80 lines 1–16 it should be noted that the Agency responded to requests from both Treasury and the Federal Reserve in the 1980–81 time period for biographic trace information on the Arab shareholders in Financial General Bankshares. The information provided was basic biographic information, which included no derogatory information except to note that one individual had been named in a U.S. court as one of those making allegedly illegal purchases of Financial General Bankshares.

e. On page 13 lines 16–19 it should be noted that in early 1985 the Agency advised the Department of the Treasury that BCCI had gained control of a Washington D.C. based holding company. Our records indicate that three months later Treasury had identified the bank as Financial General Bankshares.

STANLEY M. MOSKOWITZ,
Director of Congressional Affairs.

Senator KERRY. Senator Brown.

Senator BROWN. Mr. Kerr, I know you dealt with this in opening statements and by reference. But I thought it might be worthwhile to go back through with what specifics we had with regard to Mr. Lance's allegations about the Central Intelligence Agency.

Specifically, what he had referred to before the committee was that Mr. Abedi and BCCI had, in effect, turned into the Bank of the CIA. We don't have a lot of specifics relating to this charge, but what we do have are three things: one, the allegation by Mr. Lance that Mr. Abedi was on the CIA watch list with regard to this specific. Do you know if that is the case?

Mr. KERR. No, that's not true.

Senator BROWN. It's not the case?

Mr. KERR. It's not the case.

Senator BROWN. He also had indicated that Mr. Abedi had been placed in CIA holding rooms during some of his visits and harassed by the CIA. One can only hope that's not sexual harassment. But do you know if that's true?

Mr. KERR. Whatever it was, it's not true.

Senator BROWN. He also alleged that, in 1984, the treatment——

Senator KERRY. Is that one of those CIA blanket denials, "whatever it was, it wasn't true?" [General laughter.]

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Central Intelligence Agency

Washington, D.C. 20505

23 July 1991
OCA 1535-91/1

The Honorable John F. Kerry
Chairman
Subcommittee on Terrorism, Narcotics and
International Operations
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your letter of May 14, 1991 regarding the Bank of Credit and Commerce International (BCCI). I apologize for the length of time it has taken to respond.

Your letter requested a copy of a memorandum prepared by CIA that was made available to former Customs Commissioner William Von Raab, and information on CIA's relationship with BCCI. We have now located a 1986 working paper prepared on BCCI, and an update of that paper prepared in 1989. While we cannot be certain, we believe it is likely that the 1986 paper is the document reviewed by Mr. Von Raab. The updated version of this paper was clearly disseminated to the Customs Service. Because of the extremely sensitive nature of this information, we will make it available to you through the Senate Select Committee on Intelligence. I have provided the two documents to Mr. George Tenet, Staff Director of the Intelligence Committee, and I have asked him to make them available to you or appropriately cleared members of your staff for review in the Intelligence Committee's secure space.

Our Inspector General is currently reviewing the matter of any CIA use of BCCI, and will provide a report of his findings to the House and Senate Intelligence Committees.

If we can be of any further assistance in this matter, do not hesitate to contact us.

Sincerely,

William H. Webster
Director of Central Intelligence

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[Whereupon, at 12:25 p.m., the subcommittee adjourned, to reconvene at 2:20 p.m., the same day.]

AFTERNOON SESSION

The subcommittee met, pursuant to notice, at 2:20 p.m., in room SH-216, Hart Senate Office Building, Hon. John F. Kerry (chairman of the subcommittee) presiding.

Present: Senators Kerry, Brown, and Wofford.

Senator KERRY. The hearing will come to order. My apologies to all for the delay. We are in the throes of, I think you know, trying to finish up on a number of pieces of legislation and hopefully, wrap up this session.

And the result is that there are about five conference reports and various different last minute dealings that we were all deeply involved in.

And I had a couple of things on the banking bill that I needed to talk to the chairman of the banking bill, so my apologies for beginning this late.

Let me ask each of you if you would rise so I may swear you in, if you raise your right hands.

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GENZMAN. I do.

Mr. KEHOE. I do.

Mr. JACKOWSKI. I do.

Senator KERRY. Gentlemen, let me say as is customary, we will place your full statements in the record as if read and if you could each take 10 minutes, which I think is a fairly lengthy amount of time to try to summarize, it might not be adequate to get the whole statement in for one or two of you. I do not know. But then we will proceed to ask questions and obviously if there are areas that you want to fill in on, you will be free to do so during the course of that time. Are you leading off, Mr. Genzman?

TESTIMONY OF ROBERT GENZMAN, U.S. ATTORNEY FOR THE MIDDLE DISTRICT OF FLORIDA; ACCOMPANIED BY MARK JACKOWSKI, ASSISTANT U.S. ATTORNEY, AND GREGORY KEHOE, FIRST ASSISTANT TO THE U.S. ATTORNEY FOR THE MIDDLE DISTRICT OF FLORIDA

Mr. GENZMAN. Yes, sir, Mr. Chairman, only two of us have statements and we will try to be brief.

Good afternoon, Mr. Chairman, my name is Robert Genzman and I am the U.S. attorney for the middle district of Florida and I have held that position since September 1988.

With me, to my left, are first assistant U.S. attorney, Gregory W. Kehoe and then assistant U.S. attorney, Mark V. Jackowski.

The Bank of Credit and Commerce International and five of its officers were convicted of money laundering in Tampa in 1990. The bank paid the largest penalty ever imposed against a financial institution in the history of the United States and all five officers received substantial prison terms.

I consider the Tampa prosecution of BCCI to be a great achievement for Federal law enforcement and so do the professional pros-

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ecutors of our office, as well as the law enforcement agents with whom they worked.

I appreciate this opportunity to address our handling of the BCCI case. And let me add, Mr. Chairman, that we appreciate your comments this morning about the dedication and performance of the investigators and prosecutors in the case.

The Justice Department first became involved in what eventually became the BCCI case in 1986, when the Customs Service advised the U.S. attorney's office that it was beginning an undercover operation, known then as Operation C-Chase. The details of C-Chase have been related before and I won't repeat those details now.

Significantly, by the time the undercover operation was finished, the undercover agents had laundered some $14 million through BCCI, with the knowledge of the bank officials. The undercover investigation concluded in October 1988 and of course, the $14 million in drug money that had been laundered through the bank was long gone at that time.

But at the time of the arrest, the Federal court issued a restraining order, shutting down BCCI's operations until the bank agreed to post a bond. So that BCCI was forced to transfer $14 million of its own money to the United States to hold, pending the outcome of the trial.

The period between the October 1988 takedown and the July 1990 conclusion of a 7-month trial stretched the investigative and prosecutorial resources of the Customs Service, the IRS, and the U.S. attorney's office to the breaking point.

There were three principal factors contributing to that problem. First, C-Chase was an extremely complex, 2-year international undercover operation. Under any circumstances, the pretrial preparation and the trial would have consumed substantial prosecutorial and investigative resources.

Second, the defense attorneys in this case adopted a scorched-earth strategy and filed hundreds of motions and briefs on every imaginable subject.

Third, more than 2,000 face-to-face meetings or telephone conversations were taped in the course of the undercover investigation and most had not been transcribed for security reasons at the time of the takedown. Many of the conversations were in Spanish and Urdu and many of them were nearly inaudible.

All of the tapes had to be transcribed and then reviewed by the undercover agent for accuracy. The amount of resources devoted to C-Chase by the Customs Service was and is a matter of debate. It should be remembered, however, that the investigation and the prosecution were not substantially impeded as a result of any alleged lack of resources.

It's undisputed that the case was brought to an extremely successful conclusion with the conviction of the bank and five of its officers and the imposition of the largest monetary penalty to date against a financial institution.

More resources could always be added in a case of this magnitude and complexity. While agents and prosecutors had to put in very long hours and work under severe time constraints along the

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way to bring this case to a successful conclusion, that is a regular, albeit unfortunate fact, of law enforcement.

Law enforcement resources are not infinite. They are extremely scarce. Every agent added to a large case has to be pulled off another case. And every huge case was in similar problems and C-Chase, again, was an unusually difficult case.

I'd like to address the plea agreement briefly. First, the indictment, among other defendants, BCCI and five of its officers with various drug conspiracy and various money laundering violations. In January 1990, on the eve of trial, the Government entered into a plea agreement with the bank.

The five individual defendants did proceed to trial. All five were convicted at the conclusion of the trial in July 1990 and received lengthy prison terms ranging up to 12½ years.

In the plea agreement with the corporation—let me start over. The plea agreement with the corporation was entered into for a number of reasons. First, the Government secured the conviction of the bank, one of its principal goals. Second, eliminating the corporation from the trial prevented a recurrence of a problem confronted in the 1986 case against the Bank of New England for money laundering, where that corporation was convicted, but all the individual defendants were acquitted.

Third, BCCI agreed to a number of substantial terms beyond the plea of guilty, including cooperation with the Government and a probation condition which incorporated the terms of its consent decree with the Federal Reserve.

Most importantly, however, the Government had been threatened with an adverse legal ruling, which would have substantially reduced the amount of any financial penalty that could be imposed against the bank, had it gone to trial.

The $14 million was forfeitable only if the bank was convicted of drug conspiracy. If the Government was not able to prove the drug case, it would have had to return the $14 million to BCCI.

And one of the hundreds of motions filed by defense counsel in the pretrial stage was a motion to dismiss the drug conspiracy count. In December 1989, the district judge ruled that the Government could not convict BCCI as a drug conspirator solely on the evidence that it was laundering the drug proceeds.

Notwithstanding legal precedent to the contrary, the judge stated that if the Government persisted in pursuing the drug conspiracy charges against the bank, he would dismiss that count. The effect of the court's ruling was to eliminate the possibility of a $14 million forfeiture against that bank.

That ruling had a profound effect on the plea negotiations. The bank's attorneys had been attempting to have the $14 million forfeiture count dropped from the indictment from the outset. Earlier they had suggested that the bank would plead guilty if the drug count and the forfeiture claim were dismissed.

We had rejected that offer but now it appeared that the trial judge was about to dismiss the drug count and give the bank exactly what it wanted. Consequently, the plea negotiations began again.

I want to emphasize that at all times these pretrial negotiations were handled exclusively by career prosecutors in Tampa, Gregory W. Kehoe, the first assistant U.S. attorney, and Terry A. Zitek, the

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Chief of the Criminal Division. As a House subcommittee staff report found, no one in the Department of Justice in Washington was involved in any way in trying to undercut the plea negotiations at any stage. Mr. Kehoe and Mr. Zitek negotiated a plea agreement with the bank. I approved it and sent it to Washington and Mark Richard, a career Deputy Assistant Attorney General in the Criminal Division, approved it without change.

It was an excellent plea agreement for the Government then, and it is an excellent plea agreement for the Government now. Under that plea agreement, BCCI pled guilty to all counts, other than the drug conspiracy count which the judge indicated he intended to dismiss.

A cease and desist order issued in 1989 by the Federal Reserve, directing BCCI to refrain from money laundering activities, was made a part of that agreement. In compliance with that order was made a condition of BCCI's probation.

The plea agreement also required BCCI to cooperate with the Government in the future. BCCI did, in fact, cooperate and its cooperation during the 7-month trial against the individual defendants in 1990 was utilized in obtaining the convictions and the resulting jail sentences against those individuals.

Moreover, in the plea agreement, BCCI agreed by stipulation to forfeit the money that had been seized at the time of the arrest. With interest, that amount now came to $15 million. That was extremely significant for several reasons.

First, this was the largest amount of money ever obtained from a bank as either a fine or a forfeiture in any money laundering case. It was three times the previous record and represents nearly half of all the money paid in fines and forfeitures by all the financial institutions convicted of money laundering since 1986.

Second, the $14 million forfeiture represented a vastly higher sum than could possibly have been obtained as a realistic matter in the form of a fine. In short, if we had gone to trial, we almost certainly, because of the judge's ruling on the drug conspiracy count, we were almost certainly going to be giving most of the $14 million bond back to BCCI.

By accepting the guilty plea, we were able to forfeit all of that money, plus interest, share it with foreign law enforcement agencies in the United Kingdom and France that had assisted in this particular investigation, and use it ourselves directly in the war on drugs.

The plea agreement has been criticized by the press and by a number of witnesses at various congressional hearings. I'm gratified that the House subcommittee staff report has found these criticisms to be inaccurate and unwarranted. According to that staff report, recent criticisms that the plea agreement was unduly lenient would appear to be inaccurate.

I want to deal with the most common misconceptions. No. 1, why did the Justice Department settle for $15 million in the Tampa case when the Federal Reserve, just this past summer, was able to fine BCCI $200 million? First, let me emphasize that fine has not been collected.

But first, as I've already explained, the Tampa case was a money laundering case involving $14 million. Because that was the

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amount of money that was laundered and that was the crime that BCCI committed, those were the facts that we could prove in court. The maximum fine was limited by the amount of money involved in the offense.

We cannot just pick numbers out of the air and impose fines based on what we suspect about a defendant's other activities. A fine must be based on what we can prove beyond a reasonable doubt.

Second, those who used the $200 million fine figure imposed by the Federal Reserve in July as an example of what the Justice Department should have obtained are confusing apples with oranges. These are simply two cases for which BCCI has been punished separately according to the law that applied in each offense.

No. 2, why didn't the Justice Department revoke BCCI's license to do business after it was convicted? It was and it still is legally impossible for the Department to compel BCCI to cease operations. None of the provisions in the statutes passed by Congress to which BCCI pleaded guilty permit the revocation of a bank's charter.

Going to trial against BCCI instead of taking that guilty plea would not have altered that fact. The authority to revoke a financial institution's charter is a responsibility of the Federal Reserve Board and appropriate State agencies, not the Justice Department. The plea agreement did not, of course, preclude any such regulatory action.

No. 3, did the Tampa case involve only the corporation and mid-level employees? Why were no high-level officials charged?

Well, first the defendants in the original BCCI case were not low-level bookkeepers. They were senior management officials with substantial responsibility for BCCI's operations in much of the Western Hemisphere. Moreover, as our recent indictment of BCCI's present and other top officers makes clear, it was never our intention to simply stop investigating BCCI after that first indictment.

The 1988 indictment and the subsequent plea agreement and the trial were the best way to obtain the evidence needed to convict even higher level officials. And we think the new indictment proves that we were right.

Some have suggested that we should have taken the bank to trial and worked out a deal to get the cooperation of the individual defendants. There are a number of reasons why we did not pursue that strategy.

First, our view is that individuals who commit a crime should be held responsible. Putting just a corporation on trial while the individuals who committed the offense all sit as Government witnesses can be an empty exercise.

Second, it is higher unlikely that the BCCI employees indicted in Tampa were going to cooperate unless they were convicted and sentenced to prison.

Third, putting a defendant on trial, excuse me, putting a corporate defendant on trial with its employees is a risky undertaking. In two of the recent cases where a bank and its employees stood trial together, that is the Bank of New England in 1986 and the LBS Bank in 1990, the jury convicted the bank but let the individual defendants go.

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And finally, as I mentioned before, if we had gone to trial against the bank, the court would have dismissed the drug conspiracy count and the forfeiture count and we would have been left with a much smaller monetary penalty.

If there is any doubt about this strategy, it was dispelled in September when we announced a new indictment, charging high-level BCCI officials with conspiracy to commit the money laundering violations previously prosecuted in Tampa as well as various additional offenses.

That indictment was obtained in part as a result of the criminal convictions of witnesses now cooperating with the Government. That indictment also demonstrates that the prosecutors in Tampa had been working for the past 1½ years to pursue this case as high as it leads in the BCCI hierarchy.

No. 4, did the Government, as part of the plea agreement, agree not to bring any future prosecutions? The plea agreement contained relatively standard language, committing the U.S. attorney's office for our district not to prosecute BCCI for any other Federal criminal offense then known to the Government.

This is by far the most understood, misunderstood part of the plea agreement. First the plea agreement does not bar future prosecution of any individual, whether an official of BCCI or not. The plea applies only to the bank. It does not prevent the U.S. attorney in Tampa or any other prosecutor, State or Federal, from prosecuting any individual from the president of BCCI on down.

Indeed, we recently indicted the president of BCCI, other high-ranking BCCI officials, Medellin cartel kingpins, and other cartel members for money laundering offenses related to Operation C-Chase.

Witnesses who have testified before this subcommittee that the plea agreement somehow protects corporate officials and other individuals, either do not know what they are talking about or have chosen to intentionally mislead Congress, the press, and the public.

Second, as the House subcommittee staff report makes clear, the plea agreement relates only to the U.S. attorney in Tampa. It does not bar any other prosecutors, State or Federal, from prosecuting BCCI itself for any offense.

Paragraph 16 of the plea agreement, a public document, is perfectly clear. It is further understood that this agreement is limited to the office of the U.S. attorney for the middle district of Florida and cannot bind any other Federal, State, or local prosecuting authorities.

That means exactly what it says. The Tampa U.S. attorney's office cannot bring future charges against BCCI unless the bank fails to cooperate or the Government comes up with new allegations, but other offices remain free to conduct investigations and bring additional charges against the bank. In fact, just last week the Justice Department announced another indictment against BCCI and other high-level officers of the bank.

What future charges would be barred by the plea agreement? At the August 1 hearing, several Senators asked that question. One witness, Mr. Von Raab, after spending hours attacking the plea agreement, responded, I don't know, I don't know the details or the technical side of it.

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Mr. Jack Blum, another witness at that hearing, gave the committee a list that he said included misrepresentations to the Fed, misstatements on the audit papers delivered to regulatory authorities elsewhere, falsification of all the bank's books, aiding and abetting a variety of smuggling schemes, and bribery and other forms of corruption.

Every single one of the alleged crimes that Mr. Blum listed is being investigated by Federal agents and prosecutors somewhere other than Tampa, in Washington, Miami, Atlanta, and elsewhere. All of those offices remain free to prosecute the bank and its affiliates for any crime they undercover. In fact, BCCI and several affiliates were indicted in Washington on November 15 on racketeering and other charges as I mentioned.

As a U.S. attorney in Tampa, I can only prosecute crimes that occur in my district. If none of these crimes occurred in Tampa, and none appear to have occurred there at this point, we are giving up virtually nothing by agreeing not to prosecute them.

No. 5, a question was raised earlier today as to why RICO charges were not brought against the bank, which would have permitted—would they have permitted a more substantial forfeiture? It was our judgment that RICO charges should not be added to the indictment. Essentially, RICO charges would have greatly complicated an already complicated case. And there were concerns that the jury would not have been able to follow all of the charges and we did have jury problems in this particular case, let me add.

RICO charges would not have added significantly to the potential sentence. The forfeiture provisions were viewed as unnecessary in light of case law supporting the charges that we already had in the indictment. But simply, we believe that the RICO charges would have added nothing and would have greatly complicated the case.

It is absolutely untrue, as has been suggested, that the entire bank could have somehow been forfeited to the U.S. Government had RICO charges been brought in Tampa. There was simply insufficient evidence to support such a sweeping international forfeiture.

In conclusion, the prosecution of BCCI in Tampa was a significant law enforcement victory. The Department of Justice obtained the maximum monetary penalty from BCCI and had the responsible BCCI executives sentenced to prison. More importantly, it was the first step in an ongoing investigation and prosecution which continues to this day.

The criticisms of our performance have been unfounded and unfair. That concludes my testimony and I am prepared to answer your questions.

Mr. Chairman, I understand that Mr. Jackowski has an opening statement.

[The prepared statement of Robert Genzman follows:]

PREPARED STATEMENT OF ROBERT W. GENZMAN

Mr. Chairman, my name is Robert W. Genzman. I am the U.S. Attorney for the Middle District of Florida, which includes offices in Tampa, Orlando, Jacksonville, and Fort Myers. I have held that position since September 1988.

The Bank of Credit and Commerce International ("BCCI") and five of its officers were convicted of money laundering in Tampa in 1990. The bank paid the largest

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penalty ever imposed on a financial institution in the history of the United States, and all five officers received substantial prison terms.

I consider the Tampa prosecution of BCCI to be a great achievement for federal law enforcement, and so do the professional prosecutors in my office and the career law enforcement agents with whom they work. I appreciate the opportunity to address our handling of the case.

OPERATION C-CHASE

The Department of Justice first became involved in what eventually became the BCCI case in 1986, when the Customs Service advised the U.S. Attorney's Office in Tampa that it was beginning an undercover operation known as Operation C-Chase. The details of C-Chase have been related before, most recently in the testimony of Deputy Assistant Attorney General Paul Maloney before the Senate Banking Committee on May 23, 1991. In sum, what happened in C-Chase was this.

Two Customs agents, posing as professional money launderers, made contact with a group of money launderers based in Medellin, Colombia. The Colombians arranged for millions of dollars—dollars derived from cocaine sales in the United States—to be delivered to the agents for deposit into Florida banks. The Colombians wanted the agents then to wire the money from Florida to Panama where it could be deposited into dollar-denominated accounts and converted into untraceable checks that would be sold on the black market in Medellin, Colombia. In this way, the Colombians would collect the payment for the drugs they had exported to the United States. All the agents had to do, aside from depositing the cash in Florida, was to open an account in a Panamanian bank in the name of a phony corporation. To do this, they chose a branch of BCCI in Panama City.

At this time, BCCI was chosen because it was the only international bank with branches in Panama that also had an agency in Tampa. The undercover Customs agent was able to walk in off the street in Tampa and make arrangements to open up a Panamanian checking account simply by completing the account opening forms.

In the fall of 1987, an officer of the Panama City branch of BCCI placed a telephone call to the agents in Florida. He said essentially, "I see that you are moving a lot of money through your account; I think you're laundering money; and I think I can help you do it more efficiently." This officer's "better idea" was for the agents to stop drawing checks on the Panamanian account and instead to direct a series of bogus loans, collateralized by certificates of deposit, through BCCI's branches around the world that would end up placing the drug proceeds in the hands of the Colombians in Medellin without creating any incriminating paperwork.

The agents accepted the bank officer's proposal and were soon introduced to a number of other, higher ranking BCCI officers in Miami, Nassau, Paris, and London. These officers, all having been advised that the agents' funds were generated by cocaine trafficking, eagerly assisted in laundering the money through a wire transfer system using certificates of deposit and back-to-back loans in the manner that had been described. By the time the scheme was finished, the agents had laundered $14 million through BCCI with the knowledge of the bank officials.[1]

The undercover investigation concluded in October 1988. The Customs agents staged a phony bachelor party to which all of the BCCI officers involved in the scheme were invited, and five of them were arrested. Of course, the $14 million in drug money that had been laundered through the bank was long gone; but at the time of the arrests, a federal court issued a restraining order shutting down BCCI's operations until the bank agreed to post a bond in an amount equal to amount of money that had been laundered. Thus BCCI was forced to transfer $14 million of its own money to the United States to hold pending the outcome of the trial.

RESOURCES DEVOTED TO C-CHASE

The period between the October 1988 takedown and the July 1990 conclusion of the trial stretched investigative and prosecutorial resources of the Customs Service, IRS, and U.S. Attorney's Office in Tampa to the breaking point. There were three principal factors contributing to the problem.

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[1] The agents in Operation C-Chase laundered a total of $33 million for the Colombians. Approximately $17 million was laundered through other banks and was not part of the BCCI case. Another $2 million was laundered through BCCI before the bank's officers were informed that the money was drug proceeds.

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First, C-Chase was an extremely complex 2-year international undercover operation. Under any circumstances, the pretrial preparation and trial would have consumed substantial prosecutorial and investigative resources.

Second, the defense lawyers in the case (who were paid by the bank) adopted a "scorched earth" strategy and filed hundreds of motions and briefs on every imaginable topic.[2]

Third, more than 2,000 face-to-face meetings or telephone conversations were taped in the course of the undercover investigation, and most had not been transcribed, for security reasons, at the time of the takedown. Many of the recorded conversations were in Spanish and Urdu, and many of them were nearly inaudible. All of the tapes had to be transcribed and then reviewed by the undercover agent for accuracy.

The prosecution team consisted principally of two experienced Assistant U.S. Attorneys, Mark V. Jackowski and Michael L. Rubinstein, with assistance from other prosecutors as necessary. The investigative team consisted of both Customs and IRS agents. At its 1989–90 peak, there were eight Customs agents, six IRS agents, and four investigative aides, all assigned full-time. In addition, a variety of supervisory personnel were involved in the management of the IRS and Customs teams.

During the pretrial period, prosecutors from our office and the investigating agents asked several times for additional resources from the Customs Service to help with the workload. Although they received additional resources from Customs, they did not receive them as quickly as desired, nor in the quantities desired.

As you know, on April 3, 1991, Special Agent Robert Mazur, the principal Customs undercover agent, resigned from the Customs Service. One of Mr. Mazur's chief complaints was "the application of inadequate resources by SAC Tampa to the investigation." [3]

The amount of resources devoted to C-Chase by the Customs Service was and is a matter of debate. It should be remembered, however, that the investigation and prosecution were not substantially impeded as a result of any alleged lack of resources. It is undisputed that the case was brought to an extremely successful conclusion, with the conviction of BCCI and five of its officers, and the imposition of the largest monetary penalty to date upon a financial institution.

More resources could always be added to a case of this magnitude and complexity. While agents and prosecutors had to put in very long hours and work under severe time constraints along the way to bring the case to a successful conclusion, that is a regular, albeit unfortunate, fact of federal law enforcement. Law enforcement resources are not infinite—they are extremely scarce. Every agent added to a large case has to be pulled off another case. Every huge case presents similar problems, and C-Chase was an unusually difficult case.

THE PLEA AGREEMENT

The indictment charged, among other defendants, BCCI and five of its officers with various drug conspiracy and money laundering violations. On January 16, 1990, on the eve of trial, the government entered into a plea agreement with BCCI. The five individual defendants proceeded to trial. All five were convicted at the conclusion of the trial in July 1990, and received lengthy prison sentences (ranging up to 12½ years without parole) in November 1990.

The plea agreement with the corporation was entered into for a number of reasons. First, the government secured the conviction of the bank, one of its principal goals. Second, eliminating the corporation from the trial prevented a recurrence of the problem confronted in the 1986 Bank of New England money laundering trial, where the corporation was convicted and all the individual defendants were acquitted. Third, BCCI agreed to a number of substantial terms beyond its plea of guilty, including cooperation with the government and a probation condition which incorporated the terms of its consent decree with the Federal Reserve. Most importantly, however, the government had been threatened with an adverse legal ruling which would have substantially reduced the amount of the financial penalty that could be imposed against the bank had it gone to trial.

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[2] *See, e.g., United States* v. *Awan* (Awan order), No. 88-330-Cr-T-13B (M.D. Fla. Dec. 5, 1989); *United States* v. *Awan* (Ashraf order), No. 88-330-Cr-T-13B (M.D. Fla. Dec. 5, 1989) (together rejecting challenges to the money laundering statutes on grounds of First Amendment violations, unconstitutional vagueness, the definition of "proceeds," the definition of "controlled substances," the definition of "transportation," duplicity, multiplicity, double jeopardy and other matters).

[3] Letter from Robert Mazur to U.S. Customs Commissioner Carol Hallett, April 3, 1991, at 2.

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The indictment charged the bank and its employees with, among other things, money laundering (18 U.S.C. § 1956) and drug conspiracy (21 U.S.C. § 846) predicated on the money laundering activities. Linked to the drug conspiracy was a forfeiture count (21 U.S.C. § 853) that, upon conviction, would have permitted the government to retain the $14 million bond that had been posted at the time of the arrest. The money was thus forfeitable *only* if the bank was convicted of the drug conspiracy. If the government was not able to prove the drug case, it would have to return the $14 million to BCCI.[4]

One of the hundreds of motions filed by defense counsel in the pre-trial stage was a motion to dismiss the drug conspiracy count. BCCI argued that even though the money involved in the case was drug money, a conspiracy to launder drug money was not the same thing as a conspiracy to distribute drugs. The government, relying on case law from several different circuits, responded that money laundering activity is an integral part of the drug business, and that therefore a money launderer is properly chargeable with participating in a drug conspiracy.[5]

On December 5, 1989, U.S. District Judge W. Terrell Hodges ruled that the government could not convict BCCI as a drug conspirator (under 21 U.S.C. § 846) solely on evidence that it laundered drug proceeds, notwithstanding legal precedent to the contrary. Judge Hodges stated that if the government persisted in pursuing drug conspiracy charges, he would dismiss that count of the indictment at the close of the government's evidence.[6]

The effect of the court's ruling was to eliminate the possibility of a $14 million forfeiture against the bank under 21 U.S.C. § 853. At the time, the money laundering statute permitted only forfeiture of the bank's profits on the laundered money (approximately $250,000), not the amount laundered. Furthermore, because the court did not formally rule on the motion pre-trial, the government could not appeal the decision.

The ruling had a profound effect on the plea negotiations. The bank's attorneys had been attempting to have the $14 million forfeiture count dropped from the indictment from the outset. Earlier, they had suggested that the bank would plead guilty if the drug count and forfeiture claim were dismissed. We had rejected that offer, but now it appeared that the trial judge was about to dismiss the drug count and give the bank exactly what it wanted. And so the plea negotiations began again.[7]

I want to emphasize that at all times these plea negotiations were handled exclusively by career prosecutors in Tampa: Gregory W. Kehoe, the First Assistant U.S. Attorney, and Terry A. Zitek, Chief of the Criminal Division. As the House Subcommittee Staff Report found, no one in the Department of Justice in Washington was involved in any way in trying to undercut the plea negotiations at any stage.[8] Washington's role was merely to make legal experts available to provide legal advice, and to approve the plea agreement once it had been finalized in Tampa. The assertion by Mr. Von Raab, for example, that I was referring all kinds of decisions to the Department of Justice is just plain false.[9] Mr. Von Raab, I might point out, had already left the Customs Service by this time and thus has no way of knowing how the guilty plea was negotiated.[10]

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[4] As is discussed later, there was no applicable forfeiture statute for money laundering in effect at the time the offenses in this case were committed.

[5] *See United States* v. *Orozco-Prada*, 732 F.2d 1076 (2d Cir.), *cert. denied*, 469 U.S. 845 (1984).

[6] *See United States* v. *Awan* (Ashraf order), No. 88-330-Cr-T-13B (M.D. Fla. Dec. 5, 1989), slip op. at 10-11 (noting that in enacting the money laundering statutes in 1986, Congress had expressed its intention to have future money laundering cases prosecuted under those statutes and not under the old theory that money launderers were part of a conspiracy to commit the crime that generated the money being laundered). Significantly, at the trial of the individual defendants, the trial judge granted a Rule 29 motion dismissing the drug conspiracy count against all remaining defendants for these reasons.

[7] *See* "Subcommittee Staff Report Regarding Federal Law Enforcement's Handling of Allegations Involving the Bank of Credit and Commerce International," September 5, 1991, at 20-23.

[8] *Id.* at 24-25. ("The Subcommittee staff has found no credible evidence to date to support the theory that the U.S. Attorney's office in Tampa was controlled or directed by any higher-level Department of Justice officials in negotiating the plea with BCCI * * *. [T]he plea appears to have been wholly the product of negotiations between the First Assistant U.S. Attorney in Tampa, the Chief of the Criminal Division in that office, and attorneys for BCCI. The front-line Customs and IRS agents who had expended enormous efforts and, in some cases, taken on great risk to bring BCCI to justice, ultimately approved of the agreement entered into by the prosecutors.")

[9] *See* Testimony of William Von Raab, Senate Foreign Relations Committee, August 1, 1991, transcript at 94 (morning session).

[10] *See* Von Raab testimony, *id.* at 38 (morning session). ("* * * at that point I was not in a position to be arguing with Justice, since I was out in the private sector.")

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In any event, Mr. Kehoe and Mr. Zitek negotiated a plea agreement with the bank. I approved it and sent it to Washington; and Mark Richard, a career Deputy Assistant Attorney General in the Criminal Division, approved it without change. It was an excellent plea agreement for the government then, and it is an excellent plea agreement for the government now.[11]

Under the plea agreement, BCCI pleaded guilty to all counts, other than the drug conspiracy count which Judge Hodges indicated he intended to dismiss at trial. A cease and desist order issued in 1989 by the Federal Reserve directing BCCI to refrain from money laundering activities was made a part of the agreement, and compliance with this order was made a condition of BCCI's probation.[12]

The plea agreement also required BCCI to cooperate with the government in the future. BCCI did in fact cooperate, and its cooperation during the 7-month trial of the individual defendants in 1990 was utilized in obtaining the convictions and resulting jail sentences.

Moreover, in the plea agreement, BCCI agreed by stipulation to forfeit the money that had been seized at the time of the arrests in 1988. With interest, this came to more than $15 million. This was extremely significant for several reasons.

First, this was the largest amount of money ever obtained from a bank as either a fine or a forfeiture in any money laundering case. It was three times the previous record, and represents nearly half of *all* of the money paid in fines and forfeitures by *all* the financial institutions convicted of money laundering since 1986.

Second, the $14 million forfeiture represented a vastly higher sum than could possibly have been obtained, as a realistic matter, in the form of a fine. While the money laundering statute theoretically provided that a fine of up to $28 million could have been imposed, no one in Tampa thought it even conceivable that the trial judge would impose a fine anywhere near the maximum.[13] The amount of a fine, unlike the amount of a forfeiture, was then largely subject to the discretion of the court; judges, of course, typically based fine amounts on what had been imposed in past cases.[14] The largest fine before January 1990 had been the $5 million fine in the Banco de Occidente case in Atlanta. That case had involved the laundering of *$410 million.* The prosecutors in Tampa were convinced that if a $5 million fine in a $410 million case was the largest fine ever imposed in the past, they were not likely to get a larger fine in the $14 million case against BCCI. I concurred in that judgment.

In short, if we had gone to trial, we were almost certainly—because of the judge's ruling on the drug conspiracy count—going to be giving most of the $14 million bond *back to BCCI.* By accepting a guilty plea, we were able to forfeit that money, plus interest, share it with the foreign law enforcement agencies in the United Kingdom and in France that had assisted in the investigation, and use it ourselves directly in the war on drugs.

CRITICISMS OF THE PLEA AGREEMENT

The plea agreement with BCCI has been criticized by the press and by a number of witnesses at congressional hearings. While I am gratified that the House Subcommittee's Staff Report has found these criticisms of the agreement to be inaccurate and unwarranted, [15] I want to deal point-by-point with the most common misconceptions.

Number One: Why did the Justice Department settle for $15 million in the Tampa case when the Federal Reserve, just this summer, was able to fine BCCI $200 million?

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[11] *See* "Transcript of Sentencing Proceedings," Case No. 88-330-Cr-T-13, February 5, 1990, Remarks of the Court at 15. ("I have decided that acceptance of the plea agreement and a disposition of this case in accordance with the terms of the plea agreement is an appropriate and a just disposition of these proceedings as they pertain to the Bank of Credit and Commerce International, S.A.")

[12] To my knowledge, this requirement had never been applied before in any case against a bank. It was not only innovative, but an extremely effective way to involve a regulatory agency in the post-conviction supervision of a financial institution. This requirement was important, because the Probation Office, acting alone, lacks the expertise and resources to monitor the operations of an international bank.

[13] *See* Remarks of the Court at Sentencing Hearing, Transcript at 14, indicating that the maximum fine was $28 million.

[14] The BCCI sentencing occurred prior to the adoption of organizational sentencing guidelines by the U.S. Sentencing Commission, which went into effect on November 1, 1991.

[15] Staff Report, *supra* note 7, at 23. ("Recent criticisms that the plea agreement was unduly lenient would appear to be inaccurate.")

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First, as I have already explained, the Tampa case was a money laundering case involving $14 million. That is how much money was laundered; that is the crime BCCI committed; those were the facts we could prove in court.

The maximum fine was limited by the amount of money involved in the offense. We cannot just pick numbers out of the air and impose fines based on what we suspect about a defendant's other activities. A fine must be based on what we can prove beyond a reasonable doubt in a court of law.

Second, those who use the $200 million fine imposed by the Federal Reserve in July 1991 as an example of what the Justice Department should have obtained in the Tampa case are confusing apples with oranges.[16] The Federal Reserve's fine was in connection with the First American Bank acquisition by BCCI in Washington, DC. It had nothing to do with money laundering, and it had nothing to do with Tampa. So even if the facts relating to First American had been known at the time of the guilty plea—and they were not—they could not have been made part of the Tampa case and they could not have given the court the authority to impose a fine above the maximum penalty for money laundering. These are simply two separate cases for which BCCI has been punished separately according to the law that applied to each offense.

Number Two: Why didn't the Justice Department revoke BCCI's license to do business after it was convicted in Tampa?

It was (and still is) legally impossible for the Department to compel BCCI to cease operations. None of the provisions in the statutes to which BCCI pleaded guilty permit the revocation of a bank's charter. Going to trial against BCCI instead of taking a guilty plea would not have altered that fact.[17]

The authority to revoke a financial institution's charter is the responsibility of the Federal Reserve Board and appropriate state agencies, not the Justice Department. The plea agreement did not, of course, preclude any such regulatory action.

Number Three: Did the Tampa case involve only the corporation and mid-level employees? Why were no high level officials charged?

The defendants in the original BCCI case were not low-level bookkeepers. They were senior management officials with substantial responsibility for BCCI's operations in much of the Western Hemisphere.

Moreover, as our recent indictment of BCCI's president and other top officers makes clear, it was never our intention to simply stop investigating BCCI after the first indictment. The 1988 indictment and subsequent plea agreement and trial were the best way to obtain the evidence needed to convict even higher-level officials. And we think that the new indictment proves that we were right.

Some have suggested that we should have taken the bank to trial and worked out a deal to get the cooperation of the individual defendants. There are a number of reasons why we did not pursue this strategy.

First, our view is that individuals who commit a crime should be held responsible; putting a corporation on trial while the individuals who committed the offense all sit there as government witnesses is an empty exercise. Second, it is highly unlikely that the BCCI employees indicted in Tampa in 1988 were going to cooperate with the United States unless they were convicted and sentenced to prison. Third, putting a corporation on trial *with* its employees is a risky undertaking. In two of recent cases where a bank and its employees stood trial together—Bank of New England in 1986, and LBS Bank in 1990—*the jury convicted the bank and let the individual defendants go.* And finally, as I mentioned before, if we had gone to trial against the bank, the court would have dismissed the drug conspiracy and forfeiture counts and we would have been left with a much smaller monetary penalty.

If there was any doubt about this strategy, it was dispelled in September when we announced a new indictment charging high-level BCCI officials with conspiracy to commit the money laundering violations previously prosecuted in Tampa, as well as various additional offenses. That indictment was obtained in part as a result of the

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[16] *See* Von Raab testimony (8/1/91), transcript at 36–37. ("Now admittedly, this, in relative terms was a big fine, but it was only with respect to other banking fines, but no one had ever seen a crime quite like this. So I mean, the Federal Reserve's suggestion of $200 million is probably closer to the mark* * *.")

[17] *See* Remarks of the Court at Sentencing Hearing, Transcript at 14. ("[T]he only sanction in the form of a criminal sanction available to the court in punishing corporate defendants is the imposition of a fine or a monetary penalty in the form * * * of a forfeiture, where that has been agreed to in the plea agreement, as in this case. It is not within the power or authority of the court in disposing of this case to take any punitive action against either of the corporate defendants with respect to the maintenance of their respective banking operations or impose any burden on their charters or anything of that kind. The focus of the court's attention, therefore, must be with respect to the amount of the monetary or pecuniary penalty to be imposed.")

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criminal convictions of the witnesses now cooperating with the government. That indictment also demonstrates that the prosecutors in Tampa have been working for the past 1½ years to pursue this case as high as it leads in the BCCI hierarchy.

Number Four: Did the government, as part of the plea agreement, agree not to bring any future prosecutions?

The plea agreement contained relatively standard language committing the U.S. Attorney's Office for the Middle District of Florida not to prosecute BCCI for any other federal criminal offense then known to the government. This is, by far, the most misunderstood part of the plea agreement.

First, the plea agreement does not—*does not*—bar the future prosecution of any individual, whether an official of BCCI or not. The plea applies *only* to the bank.[18] It does not prevent the U.S. Attorney in Tampa or any other prosecutor, state or federal, from prosecuting any individual from the president of BCCI on down. Indeed, we recently indicted the president of BCCI, other high-level BCCI officers, a Medellin Cartel kingpin, and other cartel members for money laundering relating to Operation C-Chase and other offenses.

Witnesses who have testified before this subcommittee that the plea agreement somehow protects corporate officials and other individuals either do not know what they are talking about or have chosen to intentionally mislead Congress, the press, and the public.[19]

Second, as the House Subcommittee Staff Report makes clear,[20] the plea agreement relates only to the U.S. Attorney in Tampa. It does not bar any other prosecutor, state or federal, from prosecuting BCCI itself for any offense. Paragraph 16 of the plea agreement is perfectly clear:

> It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state or local prosecuting authorities * * *.

That means exactly what it says.[21] The Tampa U.S. Attorney's Office cannot bring future charges against BCCI (unless the bank fails to cooperate with the government, or the government comes up with new allegations), but other offices remain free to conduct investigations and bring additional charges against the bank.[22] In fact, just last week the Department of Justice announced another indictment against BCCI and high-level officers.

What future charges would be barred by this agreement? At the August 1 hearing before this subcommittee, several Senators asked that question. Mr. Von Raab, after spending hours attacking the plea agreement, responded, "I don't know. I don't know the details or the technical side of it." [23] Mr. Jack Blum, another witness at that hearing, gave the committee a list that he said included "misrepresentations to the Fed, misstatements on audit papers delivered to regulatory authorities everywhere, falsification of all of the bank's books, aiding and abetting a variety of smuggling schemes, * * * and bribery and other forms of corruption." [24]

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[18] Paragraph 1(f) of the plea agreement clearly provides: "if the court accepts the plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge the Bank of Credit and Commerce International, S.A." or any of its "offices, subsidiaries, affiliates, [or] related or controlled entities* * *."

[19] *See* Von Raab testimony (8/1/91), transcript at 86 (morning session). ("Well, as part of the agreement, they basically agreed not to prosecute the bank *or the individuals* for anything * * * which the U.S. Attorney there already knew about.") *See also, id.* at 19 (afternoon session).

[20] Staff Report, *supra* note 7, at 25. ("There appears to be little merit to the charge that the plea agreement insulated BCCI from further prosecution by the Justice Department and its U.S. Attorney's offices.* * * In other words, the Subcommittee staff believes that the suggestion that the Justice Department had sold its case against BCCI 'down the river' evidences a misperception about the actual terms of the plea agreement and little, if any, knowledge of Judge Hodges' prior opinion and ultimate ruling in the individual defendants' trial.")

[21] *See* Remarks of Gregory W. Kehoe at Sentencing Hearing, Transcript at 11-12 (explaining, in presence of defense counsel, that plea would not bar other federal prosecutors and regulatory agencies from pursuing allegations against BCCI or its officers).

[22] Even if the plea agreements were not specifically binding only on the U.S. Attorney for the Middle District of Florida, the law would not permit prosecutors in one district to speak for the U.S. Attorneys in other districts. That is so even where the agreement promises that "the government" will not prosecute. "A plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction." *United States* v. *Annabi*, 771 F.2d 670, 672 (2d Cir. 1985).

[23] Von Raab testimony (8/1/91), transcript at 20 (afternoon session).

[24] Testimony of Jack Blum, Senate Foreign Relations Committee Hearing, August 1, 1991, transcript at 8 (afternoon session).

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Every single one of the alleged crimes that Mr. Blum listed is being investigated by federal agents and prosecutors somewhere other than Tampa—in Washington, DC, Miami, Atlanta, and elsewhere. All of those offices remain free to prosecute BCCI and its affiliates for any crime that they uncover. In fact, BCCI and several affiliates were indicted in Washington on November 15, 1991, on racketeering and other charges.

As the U.S. Attorney in Tampa, I can only prosecute crimes that occur in my district. If none of these crimes occurred in Tampa—and none appear to have occurred there—we were giving up virtually nothing by agreeing not to prosecute them.

Number Five: Why weren't RICO charges brought against the bank, which would have permitted a more substantial forfeiture?

It was our judgment that RICO charges should not be added to the indictment. Essentially, RICO charges would have greatly complicated a case that was already exceedingly complex, and there were concerns that the jury would not be able to follow all of the charges. RICO charges would not have added significantly to the potential sentence to be obtained; the forfeiture provisions were viewed as unnecessary in light of case law supporting the § 846 charges and § 853 forfeitures already in the indictment.

Put simply, we believed that RICO charges would have added nothing, and would have greatly complicated the case. It is absolutely untrue, as has been suggested, that the entire bank could have somehow been forfeited to the U.S. government had RICO charges been brought in Tampa. There was simply insufficient evidence to support such a sweeping international forfeiture.

CONCLUSION

The prosecution of BCCI in Tampa was a significant law enforcement achievement. The Department of Justice obtained the maximum monetary recovery from BCCI and had the responsible BCCI executives sentenced to prison. More importantly, it was the first step in an ongoing investigation and prosecution. The criticisms of our performance are unfounded and unfair.

That concludes my testimony. I am prepared to answer your questions.

U.S. Department of Justice Criminal Division—Convicted Financial Institutions

Institutions	Crime	Criminal fine
1986		
Metropolitan National Bank, TX	B.S.A. violation	$310,000
Border Money Exchange, TX	B.S.A. violation	8,250
Bank of New England, MA	B.S.A. violation	1,240,000
Cribbian Federal Savings, PR	B.S.A. violation	450,000
Commercial Bank & Trust, MA	B.S.A. violation	202,100
First Missouri Bank, MS	B.S.A. violation	75,000
Housatenic Bank & Trust, CT	B.S.A. violation	750
Magnolin Federal Bank, MS	B.S.A. violation	22,000
McLean Bank, VA	B.S.A. violation	80,050
Provident Institution for Savings, MA	B.S.A. violation	100,000
Seaway National Bank, NY	B.S.A. violation	2,000
Union Country Bank, TN	B.S.A. violation	10,000
1987		
Citizen First National Bank, NJ	B.S.A. violation	2,000
Inco Bank & Trust Ltd., Cayman Islands	Conspiracy	456,000
Merchants National Bank, IN	B.S.A. violation	500,000
Merchants Trust Bank, LA	B.S.A. violation	1,000
1988		
E.F. Hutton, RI	B.S.A. violation	1,010,000
American National Bank, CT	B.S.A. violation	222,000
National Bank of Fairhaven, MA	B.S.A. violation	150,000
Central National Bank/Alamo, TX	B.S.A. violation	250,000
Ramsey Savings & Loan Assn., NJ	B.S.A. violation	6,000

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U.S. Department of Justice Criminal Division—Convicted Financial Institutions—Continued

Institutions	Crime	Criminal fine
Bank J. Vontobel Co.	B.S.A. violation	20,000
1989		
Banco de Occidente, Cali, Colombia	Conspiracy	[1] 5,000,000
Peoples Bank NA, NJ	B.S.A. violation	3,000
Ponce Federal Bank, PR	B.S.A. violation	2,500,000
Smithfield State Bank, PA	B.S.A. violation	51,600
United Orient Bank, NY	B.S.A. violation	2,000,000
1990		
Bank Leumi, NY	B.S.A. violation	242,000
Bank of Credit & Commerce Int'l., Luxembourg	Money laundering	[1] 15,200,000
LBS Bank, PA	B.S.A. violation	50,000
First Westside Bank, NE	B.S.A. violation	1,200
First Bank of Georgia, GA	Money laundering	[1] 85,000
Red Oak State Bank, TX	B.S.A. violation	100,000
National Mortgage Bank of Greece	B.S.A. violation	8,000,000

[1] Forfeiture.

Mr. JACKOWSKI. For the record, my name is Mark Vincent Jackowski. I am an assistant U.S. attorney in the district of Colorado. I have been an AUSA in that district since January 1991. Prior to that, from January 1985 until January 1991, I was an assistant in the middle district of Florida, located in the Tampa division.

While in Tampa, I was assigned to the Tampa offices, middle district of Florida's task force—that is Organized Crime, Drug Enforcement Task Force. I handled major narcotics and money laundering cases.

I am here today because I was the lead prosecutor on the Tampa-based investigation and prosecution, known as Operation C-Chase, which included the prosecution of BCCI and its officers. I have personal knowledge of, and participated in virtually all of the decisions made by the middle district of Florida concerning the BCCI prosecution.

I am aware of the criticisms of the Tampa prosecution. And I believe that they are incorrect and unfair. During the course of my prepared remarks, I will try to address some of those criticisms, which Mr. Genzman has not addressed during the course of his.

When Mr. Mazur testified before the subcommittee this morning, Mr. Mazur gave a good review or summary of the course of Operation C-Chase and how it is that the undercover agents came to be in contact with BCCI.

Mr. Mazur indicated that during December 1987 he had had a series of meetings in Miami with a BCCI officer from Panama. And that officer proposed to him better ways to launder money. The name of that officer, as I believe Mr. Mazur testified to, was Sayed Aftab Hussain.

Just before Christmas 1987, following those series of earlier December meetings, Mr. Hussain provided the name of Amjad Awan to Mr. Mazur as a contact in Miami. In January 1988, Mr. Mazur met with Mr. Awan, Mr. Hussain, and Mr. Akbar A. Bilgrami, another BCCI Miami banker, in Miami, and made arrangements

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through Awan and Bilgrami to launder money via BCCI Panama, and a BCCI subsidiary in Switzerland known as BCP.

In March 1988, my office received its first contact from Jack Blum, then an investigator for this subcommittee concerning BCCI. Mr. Blum advised me, as well as others within my office, as well as others on the investigative team of the subcommittee's investigation of drug trafficking and money laundering in Panama.

He informed our office that the subcommittee had authorized and intended to issue subpoenas to two BCCI officers stationed in Miami—Amjad Awan, and S.M. Shafi. We informed Mr. Blum that we were in the midst of an undercover investigation concerning BCCI.

Based on our request, which was cleared through Main Justice, Mr. Blum agreed to hold off the issuance of the Senate subpoenas for a period of time.

As the subcommittee knows, the investigation thereafter continued between December 1987 and March 1988. Millions of dollars in U.S. currency representing the proceeds of cocaine sales were picked up in Detroit and New York. These funds were laundered through BCCI Panama, BCCI Luxemberg, and BCP Switzerland, as a result of the knowing participation of Mr. Awan, Mr. Bilgrami, and Mr. Hussain.

During late March 1988, the undercover agents met in Costa Rica with Mora and a representative of a new, major client of Mr. Mora's, who was, at that time unidentified or undocumented. During this meeting an expansion of the undercover agent's relationship with this new, major client was discussed to include the use of BCCI's facilities in Europe, to further the client's objectives.

Subsequent to the meeting, Mazur made arrangements with Awan and Bilgrami to travel to Europe in order to establish relationships with additional BCCI officials in Paris and London. This new client of Mr. Mora's also agreed to send representatives to Paris to meet with the undercover agents, and BCCI officials, to discuss an expansion of the client's relationship with the bank.

As Mr. Mazur indicated, he did, in fact, have meetings with BCCI officials on the continent, and in the United Kingdom, following these introductions. As a result of these meetings between the bakers, the undercover agents, and the client's representatives—one fellow by the name of Armbrecht, and another by the name of Uribe—the undercover agents, thereafter—during June 1988—began to pick up massive quantities of this client's cocaine proceeds in New York.

By the way, this client was later identified or documented to be an individual by the name of Gerardo Moncada, who was then unknown to law enforcement. It so turned out that Mr. Moncada is, in fact, a leading and probably right now, the ranking member of the Medellin Cartel.

In any event, these pickups from Mr. Moncada's organizations continued until late July 1988 when they stopped, due to two, intervening events. These events dictated that the takedown of Operation C-Chase not be extended past October.

First, at the end of June 1988, the Customs Service seized 110 kilograms of cocaine from Moncada's operatives in Detroit, MI, and arrested the operatives. The arrests of the operatives triggered a

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chain of events which, due to the discovery provisions of the Federal Rules of Criminal Procedure, threatened to terminate the undercover investigation.

As the subcommittee knows, defendants have the right to obtain the evidentiary basis of the charges against them from the Government. In this instance, the arrests were predicated, or based, on information developed from the C-Chase undercover operation. As a result of discussions between my office, the U.S. attorney's office in Detroit, and the Department of Justice in Washington, we agreed that prosecutors in Detroit would seek lawful delays in the discovery process through October 1988.

Although these delays were granted by the court in Detroit, the information clearly would have to be released soon, thereafter.

Second, during mid-July 1988, Moncada organization operatives conducted countersurveillance of currency pickups by undercover agents in New York, and discovered persons that they believed, or who they believed, to be law enforcement agents watching the pickups.

The Detroit seizure and arrests, coupled with the burned New York surveillance, caused the Moncada organization to suspect that Mr. Mazur and his associates were, in fact, Federal agents. As a result of these events, several things happened.

First, the currency supply for the Moncada organization dried up.

Second—although this was not learned until long after the indictment—the Moncada organization removed Mazur's signatory power on the $1 million certificate of deposit account, which meant that Mazur no longer had the authority to transfer those funds.

Third, Mazur was informed by Armbrecht—Armbrecht was Moncada's operative, with whom he had met in Europe, during the course—and this meeting occurred during early August at a hotel in Miami—that he, Mazur, was suspected of being a Federal agent, and therefore business with him had been suspended by the Moncada group.

Mazur was told that if he was an agent there was, quote: "No hole in the world deep enough to hide him," closed quote. And I believe that quote comes from a transcript of that meeting. In short, the undercover investigation seemed to be heading rapidly toward a conclusion.

By the summer of 1988, a decision had been made to terminate the C-Chase investigation with a phony wedding between Mr. Mazur and an undercover agent posing as his fiance. The ruse of a wedding was intended to lure BCCI officers and others, the others being traffickers, into the United States in order to affect their arrests. A wedding date of October 9, 1988, was set, and plans were made to coordinate simultaneous arrests and searches in London, Paris, and the United States.

Accordingly, in August 1988, representatives of British and French Customs attended meetings in Tampa to address some of the coordination issues regarding a takedown. At the time it was contemplated that Mr. Mazur and other cover agents would again travel to Europe during September 1988, in order to acquire additional evidence.

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However, in early 1988, a 1,200 kilogram load of cocaine secreted in anchovy cans was seized by the Customs Service, and the DEA, in a port of Philadelphia, based on information obtained through the C-Chase investigation.

Roberto Alcaino, who Mr. Mazur testified about this morning—the principal behind this load—was arrested at LaGuardia, NY, following the seizure. This seizure, and the resulting arrests, made it even more doubtful that the undercover operation would reach its planned, October takedown date.

Nevertheless, on the heels of this seizure, Mazur and his undercover fiance travelled to Europe. They met with a fellow by the name of S.Z.A. Akbar, the same Ziauddin Akbar who Mr. Mazur testified about this morning, who was a principle of Capcom in London, on September 20 and 21, 1988.

During the course of these meetings, after Mr. Akbar was informed that the source of the funds was narcotics trafficking, he agreed to assist in their laundering. From there, the agents travelled to Paris, and again met with the French bankers—among them, Mr. Howard and Mr. Hassan and Mr. Chinoy—about whom Mr. Mazur testified this morning.

Additional evidence relative to the culpability of these three, individual bank officers, as well as the bank as an institution, was acquired during the course of these meetings. The undercover agents also took steps to insure that these individuals attended the undercover wedding. The agents returned to the States by the end of September 1988. And as the subcommittee knows, the takedown was then scheduled for October 8, 1988.

Which leads us to the takedown. I am aware that questions have been raised with respect to the timing of the takedown. Indeed, it has been suggested—in fact, was suggested this morning, I believe—that the takedown was predicated upon nonlaw enforcement considerations. To my knowledge, those claims are entirely false.

Back in February 1988, an Operation C-Chase coordination meeting had been held in the Tampa area. That meeting was attended by agents and prosecutors from districts around the country in which the undercover activity was being conducted. The Customs Service, the lead agency in the investigation, had determined by that time that the operation should last no longer than the late summer, or early fall of 1988.

The reasoning behind the takedown date was as follows: First, past undercover operations had given rise to concerns that they were unduly facilitating criminal activity by laundering large sums of money without obtaining commensurate results. The Customs Service and my office agreed that C-Chase would attempt to launder the minimal amount of funds consistent with the evidentiary goals of the investigation.

In other words, if there came a point in the investigation where we continued to launder funds on behalf of old clients without developing evidence against additional defendants, we would attempt to terminate the operation.

Second, it was contemplated in February 1988, and ultimately proved correct, that we would be able to make a case against culpable BCCI officials and the bank, by the time of the takedown—the time of the takedown being then set for October 1988.

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Third, by October 1988, the undercover agents had been operating undercover for almost 2 years; that in some person's minds—and it is an extremely long time to be engaged in such stressful and dangerous activities. In any event, in my view—and I believe to be correct—the operation was fortunate to last until October 1988, because of the Detroit and Philadelphia seizures, and the, quote, unquote, "burned New York surveillance."

As the subcommittee knows, the phony wedding between Mr. Mazur and his fiance did not occur. What occurred in its place was a phony bachelor party. And the defendants who had travelled to the United States from overseas were, in fact, arrested. And several BCCI officers were, in fact, arrested during the course of the bachelor party—Mr. Awan, Mr. Akbar A. Bilgrami, the Mr. Hussain who I mentioned before, Mr. Howard from France, and Mr. Hassan from France—as well as Colombia money launderers; Mr. Mora—about whom Mr. Mazur testified this morning; certain of Mr. Mora's associates; and certain of Mr. Alcaino's associates, who were, as of that time, unarrested.

Alcaino had, in fact, been arrested during mid-September 1988 as a result of the anchovy seizure. Two other defendants, including Gerardo Moncada's operative, Mr. Armbrecht, were arrested that weekend in Miami.

At this juncture, I would like to address another issue that has arisen with respect to this case, and that is the issue of leaks. Unfortunately, leaks to the others—to the press and others—occurred during the course of the undercover operation.

At least one national television news organization, NBC, was informed of the existence and nature of the undercover investigation prior to its conclusion by high-level officials of the U.S. Customs Service—not by anyone within the Department of Justice, Senators, but by high-level officials of the U.S. Customs Service.

These officials were apparently acting on the instructions of then Commissioner William Von Raab. The first such disclosure occurred at a dinner meeting between Customs representatives and an NBC news reporter at the Four Seasons Hotel in Washington, DC, in September 1988, about 1 month prior to the takedown. NBC and one other national news organization, CBS, had television cameras waiting at the Customs Service office in Tampa, after the bachelor party arrests.

It is regrettable, Senators, that the lives of the undercover agents, including Mr. Mazur—and remember that Mr. Mazur's life had already been threatened—were further jeopardized by these leaks to the press.

In fact, after the leaks to the press occurred, Mr. Mazur, as well as other agents involved in this matter—and indeed, there were a number of other agents acting in an undercover capacity in this matter—continued to meet and speak with targets of the investigation in those undercover capacities, for several weeks after the nature of this undercover operation had been leaked to the news media.

Mr. Blum also found out about the impending takedown in advance. In a memorandum dated October 7, 1988, which was released as part of the record of the proceedings before this subcommittee on August 1, 1991, Mr. Blum, in a memorandum of that

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date, October 7—which was the Friday before the arrests and the searches—described his knowledge of the impending takedown as follows. And I quote:

During the next 3 days, more than 80 people associated with the Bank of Credit and Commerce International, and related companies, will be arrested for money laundering and drug dealing. The arrests will be in more than a dozen locations here, and in Europe, and have been carefully coordinated. At the same time, the bank, itself, in a variety of accounts which have been identified as drug accounts, will be seized here and in London and Paris. The Customs operation is the result of a 2-year sting operation.

We should also take credit for fingering this situation.

Mr. Blum, had at that—Mr. Blum also obtained a copy of draft, Customs Service press materials, which were based on confidential, internal, Department of Justice memoranda, at some point prior to the unsealing of the indictment. The arrests were made on Saturday, October 8. The indictment was unsealed on Tuesday, October 12, I believe. And Mr. Blum had, in fact, known, as of October 7, 1988, of the impending takedown. He was also given copies of these draft Customs Service press materials which were, in fact, based on inaccurate and outdated Department of Justice memoranda.

Mr. Blum provided copies of those materials prior to the unsealing of the indictment to Mr. Altman, and to his partner, Mr. Kovin, of the Clifford & Warnke law firm. These materials later formed the basis of numerous, pretrial motions, which questioned the sufficiency of the Government's proof, and its conduct of the undercover investigation. Although the Government ultimately prevailed, substantial time was required to respond to the motions.

Following the indictment, the attorneys for the bank and the individual defendants began to file hundreds of motions on every conceivable topic—many of which were very complex. At the same time, we were preparing to supersede the indictment to add additional allegations and defendants. In the midst of these efforts, on March 23, 1989, Mr. Blum contacted the Customs Service. Mr. Blum indicated that through a source of his, he was privy to information with respect to BCCI that he was willing to share with us.

Mr. Blum also indicated that his position as an investigator with the subcommittee would be terminated by the end of March 1989, because the subcommittee was concluding its hearings.

Through Mr. Blum and his source, we made arrangements to meet with the alleged witness to BCCI wrong-doing. A series of meetings, which were taped at my direction, occurred in Miami on March 28 and 29, 1989. During the course of these meetings, the alleged witness who was an ex-BCCI official, provided information concerning alleged illegal activities engaged in by BCCI.

Thereafter, on March 30, 1989, the ex-BCCI official travelled to Tampa with Mr. Blum, and was interviewed by myself, agents working on the matter, as well as two, other assistant U.S. attorneys.

The ex-BCCI official who had been portrayed by Mr. Blum as having direct, firsthand knowledge concerning various matters, either did not have such information, or was unwilling to admit it. The ex-official's information appeared to be primarily hearsay, gossip, rumor, and innuendo. He was also unwilling to testify at any public proceeding.

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We were disappointed, because Mr. Blum had led us to believe that the witness could provide firsthand information relative to the bank's involvement in money laundering and other matters.

It was our assessment that the ex-BCCI official had mainly provided secondhand information, and it was apparently Mr. Blum's view, as well. In a memorandum dated March 22, 1989, from Mr. Blum to Senator Kerry, Mr. Blum stated that the ex-BCCI official's, quote: "motives are suspect, and some of his information is secondhand," closed quote. I would like to note for the record that this memorandum was included as part of the record before this subcommittee during Mr. Blum's August 1, 1991, testimony.

By the time the interviews had concluded, we were not only skeptical of the quality of the evidence provided by Mr. Blum's witness, we were also skeptical of Mr. Blum, himself. Mr. Blum told us that the upcoming termination of the subcommittee's investigation was sudden, unexpected, and suspect. Mr. Blum claimed that someone on behalf of BCCI had gotten to, or paid off this subcommittee in order for it to terminate its investigation.

Mr. Blum was unable to offer any specifics, and frankly—and I want to emphasize this—we did not credit this allegation. I did not credit the allegation made by Mr. Blum that this subcommittee had somehow been gotten to or paid off.

Mr. Blum also wanted the Government to pay him for any future assistance to our investigation. He indicated that as a result of the termination of the subcommittee inquiry, he was about to lose his job and needed money. We declined to enter into that sort of relationship with Mr. Blum.

The reason why Mr. Blum's request for payments is relevant is because it caused us to examine more closely his actions and his information, as it properly would with any witness.

We were faced—we were presented with unsubstantiated allegations made by Mr. Blum, whose motives and credibility were suspect. When we spoke with——

Senator KERRY. Mr. Jackowski, I am sorry to interrupt you. Apparently, I have just been informed, we are down to 4 minutes on our vote. So we have to leave to go over there. So we will have to recess. And if you could try to——

Mr. JACKOWSKI. Yes, sir, I will.

Senator KERRY. Your concept of a summary appears to be a word-to-word recitation of the 20-some pages, which is a half an hour of testimony. And so if you could try, while we are gone, to figure out—we will get into all of it in the questioning.

Mr. JACKOWSKI. I do not doubt that, Senator.

Senator KERRY. I assure you that there will be plenty of opportunity for you to lay out every single bit of it. But if you could just try in the opening, to somewhat—that would leave us more time to ask questions and have a dialog on it.

So we will stand in recess until we return.

[A brief recess was taken.]

Senator KERRY. The hearing will come to order. Mr. Jackowski, you were in the process of summarizing. [Laughter.]

Mr. JACKOWSKI. I have followed the court's instructions, your honor. [Laughter.]

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Senator KERRY. So we will have a couple of more minutes to do so, and hopefully my colleague will get back here and we will proceed.

Mr. JACKOWSKI. Yes, Senator. Questions have been raised with respect to what the Government did or did not do with the information provided to it by Mr. Blum and the ex-BCCI officers. Notwithstanding the quality of the information, the finite resources available to us, and our substantial pretrial and discovery obligations, we pursued the information. A grand jury investigation was opened predicated on this information, as well as certain statements made by Amjad Awan concerning First American Bank vis-a-vis BCCI to Mr. Mazur in the course of the undercover operation.

That investigation, that is the grand jury investigation, continued until early October 1989 when, due to the lack of other available leads and the press of the upcoming trial, it was temporarily suspended. Where, as Mr. Mazur put it, a timeout was taken relative to this investigation pending the completion of the trial and the sentencing of the individual defendants.

A final criticism I would like to address is the allegation that there have been a lack of immediate results as a result of the Department's BCCI investigations. The Department of Justice does not indict on rumor or gossip or innuendo or hearsay and second-hand information. The Department indicts when we have admissible evidence. That is the standard which we applied in the middle district of Florida, with respect to our investigation and prosecution. And that is, in fact and I know this, the standard which the Department of Justice is applying across the board as a whole, with respect to the entire BCCI matter. That concludes the summary of my prepared remarks.

[The prepared statement of Mark Jackowski follows:]

PREPARED STATEMENT OF MARK V. JACKOWSKI

Mr. Chairman, my name is Mark V. Jackowski. I have been an Assistant U.S. Attorney in the District of Colorado since January 1991. From January 1985 until January 1991, I was an AUSA in the Middle District of Florida. While in Tampa, I was assigned to that office's Organized Crime Drug Enforcement Task Force ("OCDETF") section, where I handled major narcotics and drug money laundering cases.

I am here today because I was the lead prosecutor on the Tampa-based investigations and prosecutions known as Operation C-Chase, which included the prosecutions of BCCI and its officers. I have personal knowledge of, and participated in, virtually all of the decisions made by the Middle District of Florida concerning the BCCI prosecution.

I am aware of the criticisms of the Tampa prosecution, and I believe they are incorrect and unfair. During the course of my testimony, I will indicate how and why certain decisions were made in the course of that investigation and prosecution.

OPERATION C-CHASE

During the early summer of 1986, the U.S. Customs Service initiated a drug money laundering investigation which eventually came to be known as Operation C-Chase. The operation began with the introduction by a confidential informant of an undercover agent to a narcotics money launderer from Medellin, Colombia. This soon led to the introduction of the undercover agent to other money launderers.

In December 1986, two undercover agents met with Gonzalo Mora, Jr., a Medellin-based narcotics money launderer in the Tampa area. The undercover agents and Mora initially arranged for the agents to pick up U.S. currency stemming from cocaine sales and to repatriate the funds to Colombia. The undercover agents made several pickups of drug money in various U.S. cities, and the funds were transferred back to the narcotics traffickers in Colombia.

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During February 1987, Robert Mazur, one of the undercover agents, determined that it would be useful to the undercover operation to be able to offer to the traffickers the services of an international bank with facilities in Latin America. At that time, there was an agency of BCCI in Tampa, FL. Mr. Mazur made arrangements to open an account at BCCI in the name of a front company.

Between February and May 1987, the undercover agents continued to assist traffickers in the laundering of drug money. During this time, currency belonging to several of Mora's clients was picked up in Miami, Los Angeles, and New York.

In early May 1987, Operation Pisces, a DEA undercover money laundering operation, was taken down. As a result, Mora and certain of his associates raised questions as to whether the undercover agents were in fact, federal agents. It was not until August 1987 that Mora and his associates were satisfied with the bona fides of the agents, and the agents' undercover business resumed and, indeed, grew.

In September 1987, Mora informed the undercover agents that he had acquired a new major client—whom he did not identify—and that the client wanted his funds repatriated to him via a Panamanian (rather than a United States) bank. Mr. Mazur had such a bank available: BCCI. In July 1987, Mr. Mazur had opened an undercover account at the Panama City, Panama branch of BCCI.

Beginning at the end of October 1987, and continuing through November 1987, undercover agents in Detroit picked up approximately $2.3 million from a drug trafficking and laundering organization operating on behalf of the Medellin Cartel. These funds were deposited in the form of currency in undercover accounts with cooperating U.S. banks and subsequently wire transferred to the undercover account at BCCI in Panama City. Once the funds were received in the BCCI account, they were rapidly withdrawn by Mora's new client.

The nature and extent of the transactions in this account did not go unnoticed by officials within the Panama City branch of BCCI. On November 24, 1987, Syed Aftab Hussain, an operations officer at the Panama City branch, informed Mr. Mazur that BCCI was a "full service" bank and proposed that he meet with Mazur personally.

Mr. Mazur and Hussain met in Miami during early December, 1987. During the course of these meetings, Mr. Mazur told Hussain that the source of his clients' funds was cocaine trafficking in the United States. Rather than refusing to deal with Mr. Mazur, Hussain made recommendations to enable Mr. Mazur to better launder his clients' funds. Hussain also told Mr. Mazur that, due to the fact that Hussain was stationed in Panama and Mazur operated out of the United States, it would be useful for Mazur to have a contact at the Miami office of BCCI.

Just before Christmas 1987, Hussain provided the name of Amjad Awan to Mazur as a contact in Miami. In January 1988, Mazur met with Awan, Hussain, and Akbar A. Bilgrami, another BCCI-Miami banker, in Miami and made arrangements through Awan and Bilgrami to launder money via BCCI Panama and a BCCI subsidiary in Switzerland known as BCP.

In March 1988, my office received its first contact from Jack Blum, then an investigator for this subcommittee, concerning BCCI. Mr. Blum advised me of the subcommittee's investigation of drug trafficking and money laundering in Panama. He informed our office that the subcommittee had authorized and intended to issue subpoenas to two BCCI officers stationed in Miami, Amjad Awan, and S.M. Shafi. We informed Mr. Blum that we were in the midst of an undercover investigation concerning BCCI. Based on our request, Mr. Blum agreed to hold off the issuance of the Senate subpoenas for a period of time.

The investigation continued. Between December 1987 and March 1988, millions of dollars in U.S. currency, representing the proceeds of cocaine sales, were picked up in Detroit and New York. These funds were laundered through BCCI Panama, BCCI Luxembourg, and BCP Switzerland as a result of the knowing participation of Awan, Bilgrami, and Hussain. During late March 1988, the undercover agents met in Costa Rica with Mora and a representative of his new major client, who still remained unidentified. During this meeting, an expansion of the undercover agents' relationship with the client was discussed, including the use of BCCI's facilities in Europe to further the client's objectives. Subsequent to the meeting, Mr. Mazur made arrangements with Awan and Bilgrami to travel to Europe in order to establish relationships with additional BCCI officials in Paris and London. Mora's new client also agreed to send representatives to Paris to meet with the undercover agents and BCCI officials to discuss an expansion of the client's relationship with the bank.

Between May 20 and 25, 1988, Mr. Mazur and other undercover agents met with three BCCI Paris officials: Nazir Chinoy, head of BCCI's French-Africa region; Ian Howard, BCCI Paris' Branch Manager; and Sibte Hassan, an aide to Chinoy. These meetings were the result of referrals by Awan and Bilgrami. During the course of

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these meetings, the new BCCI players were informed of the source of the funds and agreed to facilitate the transactions. The bankers also met with the client's representatives. By this time, the client had been tentatively identified as "Don Chepe," of Medellin, Colombia. "Don Chepe" was described by his representatives to be a major cocaine importer, distributor, and launderer. The bankers satisfied the concerns of "Don Chepe's" representatives about BCCI. The representatives, Santiago Uribe, a lawyer from Medellin, Colombia, and Rudolph Armbrecht, an aircraft broker, agreed to place $1 million in the form of a certificate of deposit with BCCI Paris as a test of the bank's capabilities. The undercover agents did not know at the time that "Don Chepe," whose true name is Gerardo Moncada, had been doing business with the Colon, Panama, branch of BCCI since 1985. As a direct result of Operation C-Chase, Gerardo Moncada was identified as being a ranking member of the Medellin Cartel.

After the Paris meetings, the undercover agents travelled to London and met with Asif Baakza, the head of BCCI's Corporate Unit in London. This meeting, again the result of a referral by Awan and Bilgrami, ended with Baakza's agreement to launder cocaine proceeds.

As a result of the European contacts with Armbrecht and Uribe, undercover agents began to pick up massive quantities of Moncada's cocaine proceeds in New York. These pickups continued until late July 1988 when they stopped due to two intervening events. These events dictated that the takedown of Operation C-Chase not be extended past October.

First, at the end of June 1988, the Customs Service seized 110 kilograms of cocaine from Moncada's operatives in Detroit, and arrested the operatives. The arrests of the operatives triggered a chain of events which, due to the discovery provisions of the Federal Rules of Criminal Procedure, threatened to terminate the undercover investigation. As you know, defendants have the right to obtain the evidentiary basis of the charges against them from the government. In this instance, the arrests were based on information developed from the C-Chase undercover operation. As a result of discussions between my office, the U.S. Attorney's Office in Detroit, and the Department of Justice, we agreed that prosecutors in Detroit would seek lawful delays in the discovery process through October 1988. Although these delays were granted by the court in Detroit, the information clearly would have to be released soon thereafter.

Second, during mid-July 1988, Moncada organization operatives conducted counter-surveillance of currency pickups by undercover agents in New York and discovered persons they believed to be law enforcement agents watching the pickups.

The Detroit seizure and arrests, coupled with the "burned" New York surveillance, caused the Moncada organization to suspect that Mr. Mazur and his associates were in fact, federal agents. As a result of these events, several things happened.

First, the currency supply from the Moncada organization dried up. Second (although this was not learned until long after the indictment), the Moncada organization removed Mr. Mazur's signatory power on the $1 million certificate of deposit account, which meant that Mr. Mazur no longer had the authority to transfer those funds. Third, Mr. Mazur was informed by Armbrecht during the course of an early August meeting at a Miami motel that he was suspected of being a federal agent, and therefore business with him had been suspended by the Moncada group. Mr. Mazur was told that if he was an agent, there was "no hole in the world deep enough to hide in." In short, the undercover investigation seemed to be heading rapidly toward a conclusion.[1]

By the summer of 1988, a decision had been made to terminate the C-Chase investigation with a phony "wedding" between Mr. Mazur and an undercover agent posing as his fiancee. The ruse of a wedding was intended to lure BCCI officers and others into the United States in order to effect their arrests. A "wedding" date of October 9, 1988, was set, and plans were made to coordinate simultaneous arrests and searches in London, Paris, and the United States.

Accordingly, in August 1988, representatives of British and French Customs attended meetings in Tampa to address some of the coordination issues regarding the takedown.[2] At the time, it was contemplated that Mr. Mazur and other undercover

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[1] During mid-August 1988, Mr. Mazur also learned from Awan and Bilgrami that the Senate had in fact issued subpoenas to the bank which called for records of accounts maintained at the bank by Panamanian corporations as well as others.

[2] We agreed that, should Mr. Baakza be arrested in the United Kingdom, he would be prosecuted by British authorities on the basis of information developed by the American undercover

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agents would travel again to Europe during September 1988 in order to acquire additional evidence.

However, in early September 1988, a 1,200 kilogram load of cocaine secreted in anchovy cans was seized by the Customs Service and the Drug Enforcement Administration in the Port of Philadelphia based on information obtained through the C-Chase investigation. Roberto Alcaino, the principal behind this load, was arrested at LaGuardia Airport in New York following the seizure. This seizure and the resulting arrests made it even more doubtful that the undercover operation would reach its planned October takedown date.

Nevertheless, on the heels of this seizure, Mazur and his undercover "fiancee" travelled to Europe. They met with Akbar in London on September 20 and 21, 1988. During the course of these meetings, after Akbar was informed that the source of the funds was narcotics trafficking, he agreed to assist in their laundering. From there the agents travelled to Paris and again met with Chinoy, Howard, and Hassan. Additional evidence relevant to their culpability was acquired during the course of these meetings. The undercover agents also took steps to ensure that these individuals attended the undercover wedding. The agents returned to the States by the end of September.

THE TIMING OF THE TAKEDOWN OF C-CHASE

I am aware that questions have been raised with respect to the timing of the takedown. Indeed, it has been suggested that the takedown was predicated upon non-law enforcement considerations.

To my knowledge, those claims are entirely false. Back in February 1988, an Operation C-Chase coordination meeting had been held in the Tampa area. That meeting was attended by agents and prosecutors from districts around the country in which the undercover activity was being conducted. The Customs Service, the lead agency in the investigation, had determined by that time that the operation should last no longer than the late summer or early fall of 1988.

The reasoning behind the takedown date was as follows:

First, past undercover operations had given rise to concerns that they were unduly facilitating criminal activity, by laundering large sums of money without obtaining commensurate results. The Customs Service and our office agreed that C-Chase would attempt to launder the minimal amount of funds consistent with the evidentiary goals of the investigation. In other words, if there came a point in the investigation where we continued to launder funds on behalf of old clients, without developing evidence against additional defendants, we would attempt to terminate the operation.

Second, it was contemplated in February 1988, and ultimately proved correct, that we would be able to make a case against culpable BCCI officials and the bank by the time of the takedown.

Third, by October 1988, the undercover agents had been operating undercover for almost 2 years. That is an extremely long time to be engaged in such stressful and dangerous activity.

In any event, the operation was fortunate to last until October 1988, because of the Detroit and Philadelphia seizures and the "burned" New York surveillance.

THE TAKEDOWN OF C-CHASE

The phony "wedding" between Robert Mazur and the undercover agent posing as his fiancee was scheduled for Sunday, October 9, 1988. In order to separate the targets from their families, and to effect the arrests securely, a "bachelor party" was scheduled for the previous day, Saturday, October 8.

The ruse proved highly successful. Several BCCI officers (Awan, Bilgrami, Hussain, Howard, and Hassan), the Colombian money launderers, Mora, certain of his associates, and certain of Alcaino's associates were all arrested at the "bachelor party" on October 8. Two other defendants, including Moncada's operative Armbrecht, were arrested that weekend in Miami.

Following the "bachelor party" arrests, a search was conducted of the bank's Miami offices. Simultaneous searches were conducted at the bank in Paris, at the bank in London, and at various residences in Great Britain. Three more BCCI officials, Baakza, Akbar, and Chinoy, were apprehended in Great Britain at the same time.

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agents. It was also agreed that if evidence was developed against S.Z.A. Akbar, he too, would be prosecuted in the United Kingdom. Akbar was, in fact, ultimately prosecuted and convicted by British authorities.

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LEAKS TO THE PRESS

At this juncture, I would like to address another issue that has arisen with respect to this case: the issue of leaks. Unfortunately, leaks to the press and others occurred.

At least one national television news organization, NBC, was informed of the existence and nature of the undercover investigation, prior to its conclusion, by high-level officials of the U.S. Customs Service. These officials were apparently acting on the instructions of then-Commissioner William Von Raab.[3] The first such disclosure occurred at a dinner meeting between Customs representatives and an NBC News reporter at the Four Seasons Hotel in Washington, DC, in September 1988, about 1 month prior to the takedown. NBC and one other national news organization, CBS, had television cameras waiting at the Customs Service office in Tampa after the "bachelor party" arrests.

It is, to say the least, regrettable that the lives of the undercover agents—one of whom, Mr. Mazur, had already been threatened with death by the narcotics traffickers with whom he was transacting business—were thereby jeopardized. In fact, Mr. Mazur and other agents continued to meet and speak with targets of the investigation in their undercover capacities for several weeks after the nature of the undercover operation had been disclosed to the news media.

Jack Blum, an investigator for this subcommittee, also found out about the impending takedown in advance. In a memorandum dated October 7, 1988—the Friday before the arrests and searches—Blum describes his knowledge of the impending takedown:

> During the next 3 days more than 80 people associated with the Bank of Credit and Commerce International and related companies will be arrested for money laundering and drug dealing. The arrests will be in more than a dozen locations here and in Europe and have been carefully coordinated.
>
> At the same time the bank itself and a variety of accounts which have been identified as drug accounts will be seized here and in London and Paris. * * * The Customs operation is the result of a 2 year sting operation.* * *
>
> We should take credit for fingering the situation * * *.[4]

Mr. Blum also obtained a copy of draft Customs Service press materials based on confidential, internal (as well as inaccurate and outdated) Department of Justice memoranda at some point prior to the unsealing of the indictment. Mr. Blum provided copies of these materials prior to the unsealing of the indictment to Robert A. Altman and his partner, John F. Kovin, of the Clifford & Warnke law firm. These materials later formed the basis of numerous pretrial motions which questioned the sufficiency of the government's proof and its conduct of the undercover investigation. Although the government ultimately prevailed, substantial time was required to respond to the motions.

THE ADEQUACY OF THE TAMPA CHARGES

Another question has been raised regarding the charges brought against the bank and its employees in the wake of the takedown. Former Customs Commissioner Von Raab testified before this subcommittee on August 1, 1991:

> I was annoyed at the time of the arrest in Tampa that there were not more significant charges brought against higher level BCCI officers and more significant charges brought against BCCI as a corporation * * *.

Although I was the principal prosecutor on this case, I had never heard Mr. Von Raab's alleged dissatisfaction concerning the nature of the charges or the identity of the defendants until his testimony before this subcommittee. In fact, I met with Mr. Von Raab on the evening of October 10, 1988, and he congratulated me on my efforts in the case. Furthermore, Mr. Von Raab was a principal speaker at the press conference on October 11, 1988, when the indictment was unsealed. At that time, Mr. Von Raab called Operation C-Chase "the most important money laundering case in U.S. history."

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[3] Statement of the U.S. Department of the Treasury Regarding Its Operation C-Chase and the Bank of Credit and Commerce International, appended to letter from Assistant Secretary of the Treasury (Enforcement) Peter K. Nunez to Representative Charles E. Schumer, dated October 18, 1991, at 9 (the premature disclosure of the ongoing undercover operation to the press and subsequent press coverage was "coordinated through Customs headquarters and at the direction of then-Commissioner Von Raab").

[4] Memorandum from Jack A. Blum to Senator John F. Kerry dated October 7, 1988, entitled "BCCI: The Takedown, Background and Talking Points." The memorandum was made part of the record of this subcommittee on August 1, 1991.

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Mr. Von Raab's complaint that higher-up BCCI officers were not indicted is completely misplaced. Simply put, we indicted every BCCI officer who we had a reasonable chance of convicting at trial.

CONTACTS WITH JACK BLUM

Following the indictment, the attorneys for the bank and the individual defendants began to file hundreds of motions on every conceivable topic, many of which were very complex. At the same time, we were preparing to supersede the indictment to add additional allegations and defendants. In the midst of these efforts, on March 23, 1989, Jack Blum contacted the Customs Service. Mr. Blum indicated that, through a source, he was privy to information with respect to BCCI that he was willing to share with us. Mr. Blum also indicated that his position as an investigator with this subcommittee would be terminated by the end of March, 1989, because the subcommittee was concluding its hearings. Through Mr. Blum and his source, we made arrangements to meet with an alleged witness to BCCI wrongdoing.

A series of meetings, which were taped at my direction, occurred in Miami on March 28 and 29, 1989. During the course of these meetings, the alleged witness, who was an ex-BCCI official, provided information concerning alleged illegal activities engaged in by BCCI. Thereafter, on March 30, 1989, the ex-BCCI official travelled to Tampa with Mr. Blum and was interviewed by me and agents working on the matter.

The ex-BCCI official, who had been portrayed by Mr. Blum as having direct first-hand knowledge concerning various matters, either didn't have such information or was unwilling to admit it. The ex-official's information appeared to be primarily hearsay, gossip, rumor, and innuendo. He was also unwilling to testify at any public proceeding. We were obviously disappointed, because Mr. Blum had led us to believe that the witness could provide first-hand information relative to the bank's involvement in money laundering and other matters.

It was our assessment that the ex-BCCI official had mainly provided secondhand information, and it was apparently Mr. Blum's view as well. In a memorandum dated March 22, 1989, from Jack Blum to Senator Kerry, Mr. Blum stated that the ex-BCCI official's "motives are suspect and some of his information is secondhand." [5]

By the time the interviews had concluded, we were not only skeptical of the quality of the evidence provided by Mr. Blum's witness, we were also skeptical of Mr. Blum himself. Mr. Blum told us that the upcoming termination of the subcommittee's investigation was sudden, unexpected, and suspect. Mr. Blum claimed that someone on behalf of BCCI had "gotten to" or paid off this subcommittee in order for it to terminate its investigation. Mr. Blum was unable to offer any specifics, and, frankly, we did not credit this allegation.

Mr. Blum also wanted the government to pay him for any future assistance to our investigation. He indicated that, as a result of the termination of the subcommittee inquiry, he was about to lose his job and needed money. We declined to enter into that sort of relationship with Mr. Blum. The reason why Mr. Blum's request for payments is relevant is because it caused us to examine more closely his actions and his information, as it properly would with any witness.

We were thus faced with unsubstantiated allegations made by Mr. Blum, whose motives and credibility were suspect. When we spoke with Mr. Blum's witness, he fell far short of our expectations. Nevertheless, we commenced a separate grand jury investigation into certain of these areas. Furthermore, we pursued this information despite the fact that a second ex-BCCI official brought to us by Mr. Blum during May, 1989, turned out to be an even worse witness than the first. Even Mr. Blum acknowledged that the second individual did not turn out to have the type of information which he represented to us the witness would have.

Questions have been raised with respect to what the government did or did not do with the information provided to it by Mr. Blum and the first ex-BCCI official. Notwithstanding the poor quality of the information, the finite resources available to us, and our substantial pretrial and discovery obligations, we pursued the information. A grand jury investigation was opened predicated on this information as well as the statements made by Amjad Awan in the course of the undercover operation. That investigation continued until early October 1989, when, due to the lack of other available leads and the press of the upcoming trial, it was temporarily sus-

[5] This memoranda was included as part of the record before this subcommittee during Mr. Blum's August 1, 1991, testimony.

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pended pending the completion of the trial and the sentencing of the individual defendants.

RESOURCES DEVOTED TO C-CHASE

I would now like to address the issue of the investigative resources devoted to the C-Chase prosecutions. The greatest demands on those resources arose out of the need to prepare transcripts of thousands of taped undercover conversations.

Early in the investigation, we made the decision to tape as many conversations as possible with the targets of the investigation. By the time of the October takedown, undercover agents had taped more than 2,000 meetings and telephone conversations with numerous individuals. From the inception of the investigation through early 1988, a majority of those undercover conversations were transcribed or summarized.

Beginning in early 1988, however, when the investigation began to focus on the BCCI bankers, we in effect "overran our supply line" concerning the transcripts as a result of the extensive undercover activity the agents were engaged in.

Because of the volume of the tapes, the undercover agents were no longer able to transcribe the tapes in a timely manner. This left us with a choice either to use outside transcription services, or to require the undercover agents to transcribe the tapes as they were generated, at the risk of foregoing undercover activity. I made the decision that it was more important that the undercover agents engage in undercover activity than it was for them to transcribe tapes. I decided that the tapes could be transcribed and made available in discovery after the case was indicted.[6]

The obvious question is why did we not utilize non-government transcription services before the takedown. The answer to that is simple: it was my view that the need for secrecy in this investigation was paramount, and I did not want to risk compromising the investigation and putting the agents' lives at risk by providing these tapes to third parties. It is well-known within the law enforcement community that narcotics traffickers utilizing the services of private investigators, attorneys, and others are able to ferret out information concerning ongoing drug investigations. The risk of compromise was not one that I was willing to take.

In any event, the transcription process started in earnest shortly after the end of the investigation. This process, given the poor audibility quality of the tapes (most of which needed to be enhanced in order to be heard) and the heavily-accented English of the BCCI defendants, was tedious. This process was the subject of much discussion and dispute between my office and the Customs SAC in Tampa, as well as within Customs itself. Unfortunately, there were only four or five agents who were willing and able to do this arduous work.

SAC-Tampa was well aware that the transcription process was causing us discovery problems with the District Court. This problem came to a head during the spring of 1989, and continued thereafter. Although the disputes were ultimately resolved, in many instances suitable transcripts were not finalized until the day the underlying tapes were played in Court. Nevertheless, due to the efforts of Mr. Mazur and the small cadre of agents assisting him, the ultimate high quality of the transcripts was recognized by the trial judge. Without the transcripts, an effective prosecution would not have been possible.

THE PLEA AGREEMENT

As the subcommittee knows, the Tampa U.S. Attorney's office entered into a plea agreement with BCCI in January, 1990, on the eve of trial. This agreement has received much criticism, most of it ill-informed. For instance, Mr. Von Raab testified before this subcommittee on August 1, 1991, that "I think it was a shameless agreement. It had a number of terrible aspects." Mr. Von Raab acknowledged, however, that "I don't know the details or technical side of it."

I do know the details and technical side of it, and they are as follows:

1. The purportedly "shameless" plea agreement did not prevent the Department of Justice from prosecuting BCCI. It only bound the Middle District of Florida from prosecuting BCCI for matters under investigation at the time of the agreement. The Department of Justice in Washington and every other U.S. Attorney's Office in the country is free, and has been free at all times, to indict and prosecute BCCI.

2. The plea agreement precludes *no* federal prosecutor *anywhere* from indicting *any* employee, officer, or director of BCCI for *any* criminal offenses.

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[6] This is not to say, however, that we were unaware of the nature of the conversations. I received timely reports of the undercover contacts with the targets from Mr. Mazur; in addition, an IRS agent listened to relevant portions of key tapes to enable us to prepare the indictment and search warrant affidavits.

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3. The plea agreement resulted in the largest monetary penalty *ever* imposed upon a corporate defendant for money laundering. This $15 million penalty did not consist, contrary to Mr. Blum's and Mr. Von Raab's assertions before this subcommittee, of the profits that the agents had "created in the drug deal." It was the bank's money. The bank's profits as a result of engaging in transactions with the undercover agents did not exceed $250,000.

4. The plea agreement resulted in an admission by BCCI that money laundering of narcotics proceeds was among its corporate policies.

5. The plea agreement resulted in the bank pleading guilty to *every,* and I repeat, *every* readily provable count in the indictment. The bank pleaded to 33 substantive money laundering counts, as well as a count of conspiracy to launder drug money. The only count the bank did not plead guilty to was a narcotics conspiracy count. This was as a result of a pre-trial order entered on December 5, 1989, by the trial judge which I understand Mr. Genzman's testimony will address.

6. The plea agreement has been criticized for not putting the bank out of business. As the trial judge indicated when he accepted the plea agreement and sentenced the bank on February 5, 1990, federal criminal law makes no provision for revoking the bank's license to do business in the United States. As this subcommittee knows, the decision to permit a foreign bank to do business in the United States rests with regulatory authorities.

7. The plea agreement has also been criticized for permitting the "most serious offender," the bank, to escape with a light punishment. First, as I have related, the bank did not escape lightly. They paid a $15 million penalty and admitted that they had a corporate policy of laundering drug money, forever tarring the bank with that admission. Second, they agreed to cooperate with the government. Unfortunately, due to the ongoing nature of the investigations which their cooperation has impacted, I am unable to disclose the strength of that cooperation. Third, the publicity stemming from the bank's prosecution had an adverse economic impact on the bank.[7] Finally, the Department of Justice was and is free to investigate and prosecute individuals as well as the bank itself for any and all crimes. The plea agreement did not preclude the Middle District of Florida from returning a RICO indictment against other high level officials of the bank, Colombian drug traffickers, and others, which was unsealed on September 5, 1991. In fact, the RICO enterprise in that prosecution was defined to include BCCI.

As I have testified, the plea agreement did not preclude the government from prosecuting the bank employees who were charged in the indictment. As you know, we tried those defendants, convicted them, and they received serious sentences. Questions have been raised as to why we accepted a plea from the bank and not from the individual defendants. We in fact attempted to enlist the defendants' cooperation, but were unsuccessful in doing so. This was due to a number of factors:

There was a fundamental difference of opinion between the government's view of the case and the defendants' attorneys' view of the case. We viewed the bankers as being no different than drug dealers. The defense attorneys viewed their clients as white collar criminals. My office's plea agreement policy in drug cases gave the individual defendants, as with any defendants similarly situated, three choices: go to trial; plead guilty to the entire indictment; or plead guilty and cooperate with the government in the hopes of receiving a reduced sentence. However, in this case, the individual defendants, with one exception, refused to give proffers of what their testimony and knowledge would be. They also had unrealistic expectations as to the length of prison time they were likely to serve, even with cooperation. Finally, their attorneys convinced them that they could beat the charges. As a result, we never consummated plea agreements with any of the individual defendants.

CONCLUSION

The final criticism that I would like to address is the so-called lack of additional, immediate results in the BCCI matter. The Department of Justice does not indict on rumor, gossip, innuendo, hearsay, and secondhand information. We indict when we have admissible evidence. I can assure you that the Department is moving ahead rapidly in this matter. When sufficient admissible evidence to convict has been accumulated as a result of the various BCCI investigations, then, and only then, will indictments be sought. That is the standard which is applied in the Middle District

[7] See written testimony of J. Virgil Mattingly, Jr., General Counsel of the Board of Governors of the Federal Reserve System, September 13, 1991, before the House Committee on Banking, Finance and Urban Affairs, at 14.

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of Florida and that is the standard which the Department of Justice will apply across the board.

Senator KERRY. Now, let me try to find a beginning here, amidst these long summaries. In a sense, gentlemen, the two of you have come in and given, I think obviously, plausible, and intelligent, and credible sense from your perspective about what you did, and why you did it, and how you did it.

The question that leaps to my mind, and I suspect in the minds of some other observers, is whether you are seeing the forest for the trees. I think Mr. U.S. Attorney Genzman you said, and I quote you: "Tampa was a money laundering case." And that is the way you viewed it. But to me and a lot of other people, and I think to Bob Mazur according to his testimony today, it was much more than a money laundering case.

It was a case where information was surfacing about the illegal ownership of banks in the United States, about our arms, about broad-based criminal activity. And the sense a lot of people have is that, yes, while you can come here and say indeed, this was very credible and we achieved a lot, as Bob Mazur himself said, it achieved far less than it could have, and that some people think should have. Now how do you respond to that?

Mr. GENZMAN. Let me start, Mr. Chairman, by saying that we had a takedown that required the Tampa case to focus on money laundering. If we had not, I would be at the witness table today explaining why we went up every rabbit trail we could find, and ignored what we had in front of us, which was the money laundering case. And let me add, this one of the first, if not the first——

Senator KERRY. But who suggested that you ignore that?

Mr. GENZMAN. If you let me proceed, I was just going to get to that Mr. Chairman. We could not ignore what we had before us, which was a money laundering case. And contrary to testimony that you heard in August, this case was not brought to our office wrapped in a ribbon ready to go. There was an incredible amount of work that had to be done. We had to give priority to that case. We had to abide by the judge's timetable, the Speedy Trial Act discovery requirements, but we did not ignore these other allegations as they came in.

Senator KERRY. Did you write a letter to the Attorney General saying Mr. Attorney General, we have an extraordinary case here which involves the illegal ownership of the bank, which involves many more millions of dollars than we have yet proven. And we need people down here in order to be able to do this.

Mr. GENZMAN. I could show you a stack of letters and memos that we have written, that I have written since I became U.S. attorney right around the time of the takedown, which asked for additional resources.

Senator KERRY. Did you get them?

Mr. GENZMAN. Not just for the BCCI case, but for a number of other cases.

Senator KERRY. Did you get them for the BCCI case?

Mr. GENZMAN. Yes, as a matter of fact. Right, within months we received, I believe, five asset forfeiture attorneys, at least two of which were working very regularly on BCCI. And we also received

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servation stands that I wish there would have been that many people working on it or I wish we would have had the power of that grand jury back a couple of years ago, because I truly believe there was a lot to lay on the table at that point in time.

Now that is not, you do not control that. You are operating without a lot of resources. And, if anything has been underscored in this, both this morning and this afternoon, it is the real handicap of this process, of a couple of people working long hours and a couple of investigators who have almost got to suspend an investigation in order to prepare for a trial and go back.

There is not a defense attorney out there who does not understand it and there is not a corporate defendant out there who does not understand it, which is why they are prepared to spend $40 million hiring 23 attorneys to stand up against you alone. And the imbalance of that——

Mr. JACKOWSKI. It was a fair fight, Senator. [Laughter.]

Senator KERRY. You do not hire them with any ego, do you, Mr. Mueller? But that is what makes you capable of doing what you do.

Gentlemen, I really appreciate the time and the effort and thank you for your patience and I particularly want to thank your boss, Mr. Mueller, for his patience. His hair has gotten grayer even sitting here this afternoon and we appreciate it. Mr. Mueller, if you want to come up and take a seat, the rest of this panel will be excused and we will try to get through here as rapidly as we can.

Mr. Mueller, let me ask you to rise. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MUELLER I do.

Senator KERRY. I know you have an opening statement. You may proceed.

TESTIMONY OF ROBERT S. MUELLER, III, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. MUELLER. Mr. Chairman, as you know, I'm the Assistant Attorney General in charge of the criminal division of the Department of Justice. I am pleased today to have the opportunity to address the Department's role in the investigation of the Bank of Credit and Commerce International.

I've been Assistant Attorney General since the fall of 1990 and I've been personally involved in the BCCI investigation since the summer of this year. My principal role over the past few months has been to oversee the ongoing Federal investigations and make certain that the investigations are conducted professionally, are properly organized and coordinated, and the prosecutors have access to all the necessary resources to do a responsible, professional investigation.

I have been involved almost continuously in Federal law enforcement since I became an assistant U.S. attorney in the 1970's. The BCCI investigations have been and will continue to be, as long as I am involved, conducted by the Department of Justice prosecutors according to the highest standards.

This matter is, I know the subcommittee is aware, is extraordinarily complex, one of the most complex investigations ever undertaken. That is not said as an excuse or a defense, but simply as a

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fact. Further, as has been pointed out previously, it is premature in our view to assess our performance. We cannot even fully respond to criticism because we cannot reveal grand jury proceedings or the details of our investigations.

Indeed, I must say, I find myself and we find ourselves in much the same position in this investigation as we found ourselves in the Pan Am 103 investigation, maybe 1 year ago. We then had many critics of the Pan Am 103 investigation. Reporters and others, including Members of Congress, were critical of the delay in reaching a conclusion to that investigation.

There are allegations of a political agenda driving that investigation. And we are unable to defend ourselves because the investigation was ongoing. As in the Pan Am 103 investigation, I believe our record will speak for itself when the BCCI investigations and prosecutions have concluded.

The record also showed that the criticism of the Department on its handling of the BCCI investigations, those criticisms are fundamentally unfair. The Department of Justice was conducting a major investigation of BCCI as early as 1987 in Tampa, FL. U.S. attorney Robert Genzman and his assistants have, I must say, quite ably discussed that prosecution at length and quite clearly, there's no need for me to review their testimony.

The investigations did not stop with the sentencing of the defendants in Tampa in November 1990. Since July 1991, the Department of Justice has returned two major indictments. One is the September 5, 1991, indictment in Tampa, alleging racketeering and money laundering offenses. The other is the November 15, 1991, indictment in Washington, alleging racketeering and other offenses based on the secret acquisition and control of Independence Bank and the parking of securities in CenTrust.

They were not our first BCCI indictments. They are not expected to be the last. We are pursuing all leads aggressively in every corner of the globe.

I want to turn now to some of the criticisms that have been leveled at the Department of Justice over the past few months. One charges that the Department was deliberately dragging its feet in pursuing allegations of criminal wrongdoing by BCCI. The allegation that prosecutors have deliberately failed to do their duty is absolutely and categorically false.

The report regarding BCCI, released by the majority staff of the House Judiciary Subcommittee on Crime and Criminal Justice, on September 5, 1991, found no evidence of any influence peddling affecting the Justice Department's handling of this case. And to my knowledge, no one in Government, within or without the Justice Department, has made any attempt to delay or bog down this investigation or to protect any persons from being prosecuted. Nor, to my knowledge, has anyone in the Department or in any other agency attempted to conceal any wrongdoing by the bank.

With the benefit of hindsight, it is easy to forget that BCCI is and was a foreign institution, largely operating outside the United States. It was permitted to accept deposits in the United States and had very few offices and employees here. Although it secretly acquired interests in American banks, many of the key events, even regarding those transactions, occurred overseas.

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BCCI was not an ordinary bank. It was set up deliberately to avoid centralized regulatory review. Its officers were sophisticated international bankers whose apparent objective was to commit fraud on a massive scale.

And what is often overlooked is that, to a great extent, the regulatory process in the United States worked properly. The Federal Reserve, to its immense credit, did its job, unlike many of the nations in which BCCI did do business. The United States did not permit BCCI to take deposits from its citizens. Whatever massive fraud may have been perpetrated against depositors overseas, no such fraud occurred in the United States.

While it is true that BCCI was able to acquire secret interest in several federally insured American banks, notwithstanding the efforts of the Fed, the exposure of American citizens to financial losses could have been dramatically higher.

Now the Department has been criticized for purported delays in bringing the indictments against BCCI and its officers, and I must say that the claim is simply untrue. The Department has now brought three major indictments of BCCI beginning with the first Tampa indictment in 1988 and continuing up to last week. Each of those indictments was brought when the evidence had been developed sufficiently to support the charges.

Indeed, the Department has moved with remarkable speed, given the complexity of the matters involved. The Department, in the form of the U.S. attorney's office in Tampa, was quick to follow up on additional leads coming out of the Tampa convictions of November of last year. And this last August and September, a followup money laundering indictment was returned and unsealed.

Last week, we returned an indictment charging BCCI with illegally obtaining control of Independence Bank operating out of Encino, CA. It was only in May of this year that we received the referral from the Federal Reserve on this bank. Again, as I've indicated before, the Department fully expects to bring additional indictments over the ensuing months.

The Department is aggressively pursuing all allegations of wrongdoing of BCCI and its employees. It is conducting investigations through a Washington-based task force, and in a number of U.S. attorneys' offices. At present, 37 Federal prosecutors, supported by dozens of agents and supervisory and support personnel, are conducting or supporting investigations nationwide. Two major indictments are pending and others will likely follow.

The Washington task force alone has interviewed dozens of witnesses and returned tens of thousands of pages of records. It is interviewing witnesses and securing evidence in locations such as Britain, France, Abu Dhabi, Pakistan, Egypt, the Cayman Islands, the Channel Islands, Argentina, Peru, and other countries.

In conclusion, Mr. Chairman, I want to reiterate that the Department of Justice has been working on the BCCI matter since 1987. We have obtained significant convictions already. We have two major indictments pending and we are devoting the resources necessary to ensure that if there is additional wrongdoing yet to be uncovered, it will be pursued professionally, relentlessly, and impartially, wherever it may lead.

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Thank you for the opportunity to give those opening remarks, Mr. Chairman, and I'm certainly pleased to answer any questions you might have.

The prepared statement of Mr. Mueller follows:]

PREPARED STATEMENT OF ROBERT S. MUELLER III

Mr. Chairman, my name is Robert S. Mueller III. I am the Assistant Attorney General in charge of the Criminal Division of the Department of Justice. I am pleased to have this opportunity to address the Department's role in the investigation of the Bank of Credit and Commerce International ("BCCI").

I have been Assistant Attorney General since the fall of 1990, and I have been personally involved in the BCCI investigation since the summer of 1991. My principal role over the past few months has been to oversee the ongoing federal investigations, and to make certain that the investigations are properly organized and coordinated, that they are being conducted professionally, and that the prosecutors have access to all the resources necessary to do a responsible and professional investigation.

Before I describe the current status of the investigations, and review some of the Department's past efforts, I want to make several points.

First, I consider myself to be a law enforcement professional. I have been involved almost continuously in federal law enforcement since I became an Assistant U.S. Attorney in the early 1970's. The BCCI investigations have been, and will continue to be as long as I am involved, conducted by professional prosecutors according to the highest professional standards.

Second, to my knowledge no government official—not at the State Department, the White House, the CIA, or anywhere else—has attempted to influence these investigations in any way. Furthermore, there is no political component to these investigations, and any suggestion to the contrary is entirely false.

Third, we are responsible, ethical prosecutors. We will not indict simply to get favorable press coverage or to quiet our critics. We require evidence sufficient to prove a crime beyond a reasonable doubt, and we will not indict if that evidence does not exist.

Fourth, this matter is extraordinarily complex—one of the most complex investigations ever undertaken. That is not an excuse or a defense, but simply a fact. It is unrealistic to expect overnight results if we are to maintain professional standards.

Finally, it is premature to assess our performance. We cannot even respond fully to criticism, because we cannot reveal grand jury proceedings or the details of our investigations. Our record when the investigations and prosecutions have concluded will speak for itself.

I believe that a fair review of the available facts will show that the Department of Justice has done an excellent job on the BCCI investigations, and that the criticisms of the Department are fundamentally unfair. The career, professional prosecutors whom I represent here today are proud of their accomplishments thus far, and I am confident that a complete review of the factual record will support that conclusion.

THE TAMPA PROSECUTION AND SUBSEQUENT INDICTMENTS

As you know, the Department of Justice was conducting a major investigation of BCCI as early as 1987 in Tampa, Florida. U.S. Attorney Robert W. Genzman and his assistants have discussed the Tampa prosecution at length, and I will not repeat their testimony. I do want to emphasize, however, that the Tampa prosecutions were a success. The Department of Justice convicted the bank and five high-ranking officials of serious crimes—something no other law enforcement agency in the world has been able to do. We obtained the largest monetary penalty that has *ever* been imposed on a financial institution for money laundering in this country. The five BCCI officers all received substantial prison terms ranging up to 12½ years without parole.[1] We are the only law enforcement agency in any country to have achieved such a result against this bank, and we are proud of that accomplishment.

The investigations did not stop with the sentencing of the defendants in November, 1990. Since July, 1991, when I became personally involved in the BCCI investigations, the Department of Justice has returned two major indictments: the Septem-

[1] Of the remaining seven individual defendants in the first Tampa indictment, two were convicted in Great Britain on evidence supplied by the U.S. Government; one had his case dismissed before trial; three are fugitives; and one has recently been extradited by Great Britain to the United States to stand trial in Tampa.

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ber 5, 1991 indictment in Tampa, alleging racketeering and money laundering offenses, and the November 15, 1991 indictment in Washington, alleging racketeering and other offenses based on the secret acquisition and control of Independence Bank and the "parking" of securities in CenTrust. Those indictments were not the first BCCI indictments, and they are not expected to be the last.

We are pursuing leads aggressively in every corner of the globe. We will follow the evidence wherever it may take us. And we will make every effort to bring to justice any person, regardless of his or her rank or position of influence, who has committed a crime that can be proven beyond a reasonable doubt in a court of law.

I want to turn now to some of the criticisms that have been leveled at the Department of Justice over the past few months.

ALLEGED DELIBERATE "FOOT-DRAGGING" BY THE DEPARTMENT OF JUSTICE

One of the most frequently-repeated charges has been that the Department of Justice was deliberately "dragging its feet" in pursuing allegations of criminal wrongdoing by BCCI. One witness has even accused the Department, before this very Subcommittee, of being under the sway of so-called "influence peddlers" who somehow corruptly persuaded us to ignore our duty to enforce the criminal laws of this country.[2]

The allegation that prosecutors at the Department of Justice have deliberately failed to do their duty is absolutely and categorically false. The Staff Report regarding BCCI released by the Majority Staff of the House Judiciary Subcommittee on Crime and Criminal Justice on September 5, 1991 (the "Schumer Report") found no evidence of any "influence peddling" affecting the Justice Department's handling of this case.[3] Nor has this Subcommittee, or any other congressional committee, uncovered any such evidence.

To my knowledge, no one in government, within or without the Justice Department, has made any attempt to delay or block this investigation or to protect any persons from being prosecuted. Nor, to my knowledge, has anyone in the Justice Department, or in any other agency, attempted to conceal any wrongdoing by the bank. At all times, for the past 4 years, the career prosecutors in the Department of Justice have been doing what they are compelled by their oaths of office to do: to investigate and prosecute criminal activity in a professional and impartial manner.

The claims that Department prosecutors have deliberately failed to prosecute the bank because of "influence peddling" are not merely inaccurate. Those allegations insult the integrity, and denigrate the hard work, of every career law enforcement agent and attorney who has worked on the BCCI case since it began, and whose diligence has led to the only successful prosecution of BCCI and its officers to date.

ALLEGED FAILURE TO BRING TIMELY PROSECUTIONS

Among the principal criticisms of the Department of Justice's performance have been that the Department failed to react quickly enough to so-called "strong leads" and "warning signs" regarding BCCI; that the overall federal effort was not sufficiently coordinated; and that the Department has, and continues, to engage in inordinate delay in the bringing of indictments.

A proper understanding of what the Department of Justice did, or did not do, regarding BCCI requires an initial understanding of a number of different matters: the structure and operations of the bank, the dates that allegations of crimes were made to the Department, and the respective roles of prosecutors and bank regulators.

1. *The Structure and Operations of the Bank.* With the benefit of hindsight, it is easy to forget that BCCI is and was a foreign institution, incorporated, headquartered, and largely operating outside the United States. It was not permitted to accept deposits in the United States, and had very few offices and employees here. Although it secretly acquired interests in American banks, many of the key events, even regarding those transactions, occurred overseas. More importantly, most of the witnesses, documents, and defendants were and remain outside the jurisdiction of the United States.

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[2] Testimony of William von Raab, Senate Foreign Relations Committee, August 1, 1991, transcript at 81–82 (morning session).

[3] "Subcommittee Staff Report Regarding Federal Law Enforcement's Handling of Allegations Involving the Bank of Credit and Commerce International," September 5, 1991, at 23 (" * * * no evidence has yet been uncovered that would indicate that so-called 'influence peddling' affected the outcome in Tampa").

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Equally important, BCCI was not an ordinary bank. It was set up deliberately to avoid centralized regulatory review, and operated extensively in bank secrecy jurisdictions. Its affairs are extraordinarily complex. Its officers were sophisticated international bankers whose apparent objective was to keep their affairs secret, to commit fraud on a massive scale, and to avoid detection.

2. *The Timing of Allegations of Criminal Activity.* The allegations of criminal activity by BCCI and its officers may be grouped into three sets of charges: money laundering of narcotics proceeds and other illegal activities; regulatory violations involving the secret ownership and control of American banks; and a worldwide bank fraud on depositors and creditors, in the nature of a "Ponzi"-type scheme.

a. *Money Laundering.* Virtually all of the information coming into the Justice Department regarding BCCI prior to 1991, with only a few exceptions, concerned some form of money laundering—the offense for which the bank was prosecuted in Tampa. The case in Tampa was an enormous undertaking, and may be fairly said to be one of the largest money laundering prosecutions in U.S. history. Furthermore, the Department of Justice outside of Tampa did not simply ignore other information it received regarding BCCI's money laundering activities; when evidence existed, cases were prosecuted.

b. *Secret Ownership of Banks.* The statements on the Tampa tapes in 1988, and the subsequent information obtained from a confidential informant in 1989, suggesting that BCCI secretly owned American banks were the first indications of criminal activity by BCCI other than money laundering. That information—which was extremely limited, and consisted principally of rumors, gossip, and hearsay—was referred to the Federal Reserve in December 1988. The Federal Reserve, however, was not able to collect enough evidence to satisfy even a civil standard of proof until July, 1991, after it had reviewed a copy of the Price Waterhouse report in London in December 1990.

c. *The Worldwide Bank Fraud.* Evidence regarding the so-called "Ponzi Scheme"—the allegation that the entire operation of the bank was a gigantic fraud—was not known to anyone in the government until the bank's own auditor, Price Waterhouse, uncovered the information in June 1991. In other words, auditors working inside the bank, with access to internal foreign bank records and officials in foreign jurisdictions, were apparently unable to discover the problem until the middle of this year. It is unrealistic to expect that U.S. officials could have reached the same result any sooner.

3. *The Roles of Prosecutors and Bank Regulators.* What is often overlooked, in the effort to fix blame for what happened in this case, is that to a great extent the regulatory process in the United States worked properly. As a foreign bank, BCCI's presence here was regulated by the Board of Governors of the Federal Reserve. And the Federal Reserve, to its immense credit, did its job. Unlike many of the nations in which BCCI did business, the United States did not permit BCCI to take deposits from its citizens. Whatever massive fraud may have been perpetrated against depositors overseas, no such fraud occurred in the United States. And whatever massive losses depositors may have suffered overseas, no such losses occurred here.

While BCCI may have acquired secret interests in several federally-insured American banks, notwithstanding the efforts of the Fed, the exposure of American citizens to financial losses could have been dramatically higher. The Federal Reserve refused time and again to permit BCCI to accept any deposits in the United States. What agencies and branches it was permitted to open were allowed only to make loans and otherwise to serve the customers of its overseas offices. American depositors were thus spared the devastating personal losses caused by the bank in other countries around the world.

The work of the Federal Reserve has been largely overlooked in the rush to criticize the federal government's performance in the BCCI matter. What is also overlooked, however, is that the Department of Justice is not a bank regulatory agency. The Department of Justice does not audit or examine banks. It has no power to regulate the conduct of banks, or even to close them in the wake of criminal activity. It must prove its charges beyond a reasonable doubt, not according to the lower civil standard of proof enjoyed by bank regulators.

With that framework in mind, I want to turn to some of the specific criticisms that the Department has not brought timely prosecutions against BCCI or its officers.

ALLEGED FAILURE TO HEED "STRONG LEADS" AND "WARNING SIGNS"

One of the principal criticisms of the Department of Justice has been that it ignored so-called "strong leads" and "warning signs" regarding BCCI. As I have stated, virtually all of the "leads" and "signs" coming into the Department of Jus-

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tice prior to 1991 appear to have involved money laundering activity, and the bank was prosecuted aggressively for money laundering crimes.

The chief criticism, however, has been that the Department of Justice failed to follow through on evidence that it received, beginning in 1988, that BCCI secretly owned American financial institutions. I understand that the testimony of Mr. Genzman and his assistants has addressed this point, and so I will be brief.

To my knowledge, the Department of Justice learned for the first time in 1988, through statements made by BCCI officer Amjad Awan to the undercover agent in the Tampa case, that BCCI might secretly own American banks. The essence of the information received by the Department of Justice regarding the allegations of secret ownership was passed on to the Federal Reserve after the October 1988 takedown of the undercover case.

The Department was not telling the Federal Reserve, however, anything which the Fed did not already suspect. When, on December 27, 1988, one of the IRS agents assigned to Operation C-Chase phoned the Federal Reserve and passed the information along,[4] the Fed noted that the information was uncorroborated,[5] and that it was the "kind of allegation that [they] had heard before." [6] Nevertheless, the Federal Reserve in Richmond initiated an investigation in January, 1989, but that review did not produce any corroborating evidence.[7]

According to the Federal Reserve, the key piece of evidence that enabled them to establish the connection between BCCI and First American came late in 1990 in the form of a tip concerning a previously unknown Price Waterhouse auditor's report dated October 3, 1990.[8] Before that report's existence was known, the evidence of BCCI's ownership of First American simply was not there—even to satisfy the Federal Reserve's lower civil standard of proof, much less the rigorous criminal standard.

It is therefore very questionable, to say the least, whether a greater exchange of information between law enforcement and bank regulators would have made any material difference. While it is easy to claim, in hindsight, that evidence sufficient to support a criminal conviction could have developed long ago, that is sheer speculation, not a valid criticism.

ALLEGED LACK OF COORDINATION

A further criticism of the Department of Justice has been that it failed to coordinate properly with other federal agencies in the pursuit of BCCI's criminal activities. In evaluating the accuracy of that criticism, some important points must be borne in mind.

First, the Department of Justice cannot freely exchange information with other federal agencies. For example, the Department cannot reveal the existence of evidence obtained in undercover investigations until the investigation is completed and arrests have been made. It is prohibited by law from revealing grand jury information. And it cannot reveal confidential law enforcement information to other agencies other than for criminal law enforcement purposes.

Second, other agencies have restrictions on the exchange of information which prevent the free flow of information. For example, there are strict restrictions on the dissemination of classified information. Disclosure of tax information is governed by an elaborate set of statutory restrictions. The Privacy Act prohibits disclosure of certain types of information. Even a seemingly simple exchange of information, such as the sharing of computerized law enforcement information, may raise profound privacy concerns.

Third, federal law enforcement functions are deliberately spread among a variety of different agencies. The Department of Justice itself vests substantial law enforcement authority in the 93 U.S. Attorneys in districts around the country. That decentralization of law enforcement provides great benefits in terms of efficiency and response to local needs, but also may create coordination problems in the initial stages of a large investigation.

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[4] Testimony of Virgil Mattingly, Senate Banking Committee, May 23, 1991, at 125; Testimony of Virgil Mattingly, Senate Foreign Relations Committee, August 1, 1991, at 56 (afternoon session).

[5] Testimony of William Taylor, Senate Foreign Relations Committee, August 1, 1991, at 56 (afternoon session).

[6] Mattingly testimony (5/23/91) at 125.

[7] Mattingly testimony (5/23/91) at 126; Mattingly testimony (8/1/91) at 56 (afternoon session).

[8] Mattingly testimony (5/23/91) at 123 ("That's when all of this thing came together."); *id.* at 130; Mattingly testimony (8/1/91) at 35 (afternoon session); Testimony of Robert Morgenthau, Senate Banking Committee, May 23, 1991, at 176.

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The Department of Justice clearly recognizes the need to ensure adequate interagency coordination and communication. The establishment of the Interagency Bank Fraud Enforcement Working Group in Washington, DC, was an important step forward in improving the government's response to financial institution crime, as was the recent establishment of the Financial Crimes Enforcement Network (FinCEN).

An examination of the Department's response to matters such as BCCI must, however, be tempered by practical considerations. It is unrealistic to expect that a criminal matter of this magnitude can occur, over the course of a decade and in 70 different countries, and later be investigated and prosecuted by law enforcement officials acting in perfect synchronization from the very beginning.

ALLEGED "DELAYS" IN BRINGING INDICTMENTS

The Department has also been criticized for its purported delays in bringing indictments against BCCI and its officers. Those criticisms have been strongest in recent weeks, in the wake of various congressional hearings and media reports of misconduct by BCCI and its employees.

The claim that we have not brought indictments quickly enough is simply untrue. The Department has now brought three major indictments of BCCI, beginning with the first Tampa indictment in 1988, and continuing up to last week. Each of those indictments was brought when the evidence had been developed sufficiently to support the charges, and not earlier.

I want to emphasize again that BCCI was deliberately structured to evade regulatory review throughout the world. Even Price Waterhouse, the bank's own auditors—working inside the bank, with access to records and witnesses worldwide—apparently could not uncover the fraudulent nature of the bank's affairs until mid-1991.

I also want to emphasize that this investigation involves, to an unusual degree, matters occurring outside the United States. Most of the defendants, witnesses, and documents in this case are located overseas, frequently in bank secrecy jurisdictions (such as the Cayman Islands) or countries with which we do not have an extradition treaty (such as Abu Dhabi). It is extremely time-consuming, and sometimes very difficult, to piece together such a case.

The Department fully expects to bring additional indictments over the ensuing months. However, international and multijurisdictional investigations such as this, involving complex financial transactions occurring around the world, are extraordinarily complex and time-consuming. The Department cannot and will not indict on rumor, speculation, or hearsay. We require legally admissible evidence sufficient to establish guilt beyond a reasonable doubt. We will not indict simply to obtain favorable press coverage, or in response to political pressure.

CIA REPORTS

Let me now turn briefly to the issue of the CIA's involvement regarding BCCI. First, much has been made of the fact that the CIA apparently produced and circulated reports relating to BCCI in the 1980's. For example, Mr. Von Raab has testified that in 1988 he was given a 1986 CIA report describing the "questionable" and "criminal" activities of the bank.[9] Regrettably, the Justice Department was not on the CIA's dissemination list for BCCI reports until 1990, and therefore the Department never received this 1986 report at the time it was disseminated.[10]

In any event, Mr. William Taylor of the Federal Reserve has testified that the 1986 report contained undocumented evidence that could not be followed up,[11] and Mr. Von Raab himself told the Senate that the report he saw "didn't prove to be particularly useful * * * as an investigative tool." [12] Furthermore, almost all of the information reported by the CIA, like all of the other information regarding BCCI's criminal activities that we were receiving at that time, concerned money laundering, which is exactly what the Department of Justice was already investigating.

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[9] *See* Testimony of William Von Raab, Senate Foreign Relations Committee, August 1, 1991, transcript at 71 (morning session).

[10] Although the FBI and DEA, both of which are Department of Justice components, received certain classified reports concerning BCCI earlier, the 1986 report was not disseminated to either agency.

[11] Taylor testimony (8/1/91) at 73 (afternoon session) ("the information in the CIA report is more or less speculative in the sense that it's not documented with any evidence that you could follow up on * * *")

[12] Von Raab testimony (8/1/91) at 71 (morning session).

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Second, there have been a number of irresponsible allegations that the CIA somehow blocked or delayed the prosecution of BCCI by interfering with the investigations of the Department of Justice. Those claims are absolutely without foundation. At no time, to my knowledge, has anyone from the CIA, or any other agency, attempted to obstruct or interfere with the Department of Justice's investigation and prosecution of BCCI.

NEW YORK INDICTMENT

I want to turn now to the allegation that the Department of Justice has failed to cooperate with the investigation of BCCI by Manhattan District Attorney Robert Morgenthau.

The claim that the Justice Department has not cooperated with Mr. Morgenthau is unwarranted. The Department has provided substantial assistance to his office since the July 1990 convictions in Tampa, and continues to do so today.

Prosecutors from Mr. Morgenthau's office were provided long ago with unlimited access to all exhibits and the hundreds of tapes made during Operation C-Chase; access to indices to all exhibits and tapes; copies of approximately 1,000 pages of information, including affidavits; copies of all tapes and transcripts, as requested; unlimited access to all agents who worked on the Tampa case; access to witnesses; and detailed financial flow-charts.[13]

That cooperation continues today. For example, the U.S. Embassy in Abu Dhabi, at the request of the Criminal Division's Office of International Affairs ("OIA") has presented a request to the government for the expulsion of Swaleh Naqvi to stand trial in Mr. Morgenthau's case.[14] OIA is also working with Mr. Morgenthau's office to prepare an extradition request to Pakistan for Agha Hasan Abedi. Just last week members of the BCCI task force and Mr. Morgenthau's office conducted a joint interview of an important BCCI witness.

The Department is in touch with Mr. Morgenthau's office on a continuing basis. I have personally directed that all attorneys involved in the BCCI investigation cooperate with Mr. Morgenthau's office to every reasonable extent the law allows. I have also told Mr. Morgenthau on several occasions that he should report any problems to me directly. Any claim that the Department of Justice has interfered with, or failed to cooperate with, Mr. Morgenthau's office is simply wrong.

MONEY LAUNDERING FORFEITURES

Next, I want to address one of the findings of the Schumer Report concerning BCCI's guilty plea in the Tampa case. As the Schumer Report found, the guilty plea was prompted not by any outside influence from Washington, but by the legal situation created by the trial judge's order precluding use of the drug statutes to forfeit from BCCI any of the money it had laundered. Under the court's order, the government faced the prospect, if it had taken the bank to trial, of having to *give back* to BCCI the $14 million that had been obtained from it in 1988.

When the Department of Justice first proposed what became the Money Laundering Control Act in 1985, we included a provision that would have made "any money or other property involved in [the] offense" subject to forfeiture.[15] But this provision was eliminated. The Senate Report, issued on September 6, 1986, says that the purpose of the change was to limit forfeiture to "the commissions earned by the money launderer" and to preclude forfeiture of the other money involved in the offense.[16]

The absence of this provision is what prevented the government from going to trial against BCCI and obtaining the $15 million—or any other property BCCI had used to commit the money laundering offenses—through forfeiture. When Congress limited money laundering forfeitures to the "commission" earned by the launderer, it limited BCCI's forfeiture exposure in this case to approximately $250,000, which is the sum total of the commissions the bank received.[17] If we had gone to trial and convicted BCCI, that is all the forfeiture we would have gotten, $250,000.

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[13] *See* Letter from Genzman to Morgenthau dated March 8, 1991, and attached documents.

[14] The United States does not have an extradition treaty with Abu Dhabi.

[15] *See* S.1335 in the 99th Congress.

[16] S. Rep. 99-433, 99th Cong., 2d Sess. (1986), at 8-9.

[17] The assertion of William Von Raab that $15 million "was actually less than the bank had made from its money laundering activities" is simply false. *See* Von Raab testimony (8/1/91) at 68 (morning session). The assertion of Mr. Jack Blum is similarly false. *Id.* at 69 (morning session).

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The Justice Department came back to Congress in 1988 and got the law changed, so that today laundered money is subject to forfeiture. Because, however, changes in the criminal law do not apply retroactively, we could not make use of that provision in 1990 when the trial was to take place.

CURRENT INVESTIGATIONS

The Department is aggressively pursuing all allegations of wrongdoing by BCCI and its employees. It is conducting investigations through a Washington-based task force and U.S. Attorney's offices in Tampa, Miami, and Atlanta, with related investigations and proceedings in three other cities. At present, 37 federal prosecutors, supported by dozens of agents and supervisory and support personnel, are conducting or supporting investigations nationwide. Two major indictments are pending, and others will likely follow.

Enormous investigative undertakings such as this require a balancing of the need to coordinate efforts and the need to minimize bureaucratic inefficiency. Multiple, overlapping witness interviews, grand jury subpoenas, and document demands from prosecutors around the country could prove disastrous, particularly in foreign countries where officials do not appreciate the decentralized nature of our law enforcement system. Accordingly, certain types of investigative work have to be coordinated closely. On the other hand, prosecutors and investigators must be given sufficient latitude to expend their energies productively. The task force approach, with selected independent but coordinated U.S. Attorney investigations, has been chosen to achieve that difficult balance.

The Washington task force alone has interviewed dozens of witnesses and reviewed tens of thousands of pages of records. It is interviewing witnesses and securing evidence in locations such as Britain, France, Abu Dhabi, Pakistan, Egypt, the Cayman Islands, the Channel Islands, Argentina, Peru, and other countries. It is reviewing proposed charges involving a wide variety of apparent criminal violations.

The Department's prosecutors are conducting a Herculean effort at high speed and under extremely difficult circumstances. The fact that the Department of Justice is aggressively pursuing its investigation does not mean, however, that it will return indictments regardless of the state of the evidence. As I have said repeatedly, the Department will not return an indictment simply to get favorable press coverage or to quiet its critics.

CONCLUSION

In conclusion, Mr. Chairman, I want to reiterate that the Department of Justice has been working on the BCCI matter since 1987; we have obtained significant convictions already; we have two major indictments pending; and we are devoting the resources necessary to ensure that if there is additional wrongdoing yet to be uncovered, it will be pursued professionally, relentlessly, and impartially wherever it may lead.

Senator KERRY. Thank you very much, Mr. Mueller. I appreciate it. I must confess I am a little uncertain as to where to begin for a couple of reasons.

First of all, it is late. We have been here all day and it is a long number of hours. But second, there is a strange road that has been pursued since 1987. I mean, your last comment was, we have been investigating this since 1987. And technically, that is accurate.

Mr. MUELLER. I disagree with the word technically. I think it is accurate.

Senator KERRY. Well, in 1987, you had Bob Mazur and the Customs folks who were fundamentally investigating it. You really only have an assistant U.S. attorney who, as they have all testified, is doing the trial preparations, trial counseling, and so forth.

He is not investigating. He is sort of guiding that or whatever, but the investigation was a Customs investigation. The bank was chosen haphazardly, coincidentally, however you want to call it. I mean, he just happened to pick this bank. He was talking to other banks. This bank proved fruitful. Boom, lo and behold, he is in the bank, and for 1988 and 1989, that is what it is.

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